

APPENDIX A

TRANSFER PROPOSAL

Proposal to Transfer
1000 ± acres of
East Tennessee Technology Park's Horizon Center
to the
Community Reuse Organization of East Tennessee

February 14, 2001

Submitted by
The Community Reuse Organization of East Tennessee

**Proposal to Transfer 1000± acres
of the East Tennessee Technology Park's Horizon Center
to the Community Reuse Organization of East Tennessee
for Economic Development Purposes
Pursuant to 10 CFR 770, Transfer of Real Property
at Defense Nuclear Facilities for Economic Development.**

The purpose of this document is to comply with 10 CFR Part 770, Transfer of Real Property at Defense Nuclear Facilities for Economic Development, specifically Part 770.7(a) Proposal. The Community Reuse Organization of East Tennessee (CROET) proposes that the Department of Energy (DOE) transfer ownership to CROET of a 1000-acre parcel for economic development. The parcel is currently identified as that part of East Tennessee Technology Park's *Horizon Center*. On January 16, 1996, the parcel was leased to the CROET for the purpose of developing it as a mixed use industrial/business park (Exhibit A). CROET has undertaken significant development of the parcel since that time with approximately \$9.5 million of investment into the park for infrastructure development (Exhibit B). Substantial background information was amassed for the lease regarding economic justification for the development of the park. In addition, an Environmental Assessment was completed prior to the lease and a "Clean Parcel" determination for this property was received from the U.S. Environmental Protection Agency on August 21, 2001 (Exhibit C).

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770.7 (a) Proposal.

770.7(a)(1) A proposal must include (but is not limited to):

770.7(a)(1)(i) A description of the real property proposed to be transferred

The parcel is a 957.16 acre tract (Exhibit D) located in the northwest section of the DOE Oak Ridge Reservation. The parcel is bound on the north by a perimeter road and the south by State Route 58/95. The 1000 acre parcel includes the area generally defined as "Natural Area," a 400 ± acre parcel that surrounds the meandering East Fork Poplar Creek (Exhibit E).

770.7(1)(a)(ii) The intended use and duration of use of the real property

CROET undertook a study prior to the lease of this parcel to ascertain the need for a regional industrial/business park and the efficacy of developing same. The study, prepared by Lockwood Greene Consulting, determined that there was a need for such a park and that it was economically feasible to build such a center. The Socioeconomic section of the environmental assessment anticipated that the park's development would have a positive impact in creating jobs. Proof positive of the need for and benefit of the park came as a result of the successful recruitment of the park's first tenant, Theragenics, Inc. Theragenics located in the park prior to the completion of the park's infrastructure, building a 100,000 + square foot state-of-the-art facility to

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770.7(1)(a)(ii) - Continued

manufacture its proprietary cancer fighting Theraseeds.® The facility is located on 21 acres of property subleased from CROET through 2029. Theragenics will employ nearly 300 people when fully operational sometime during 2002-2003. CROET's lease of the 1000 acre Horizon Center from DOE runs through 2038. It is anticipated that the level of investment by CROET, the State of Tennessee and the City of Oak Ridge and the anticipated investment by private sector companies locating within the park would necessitate that the property remain as a industrial/business park indefinitely

770.7(a)(1)(iii) A description of the economic development that would be furthered by the transfer (e.g., jobs to be created or retained, improvements to be made)

CROET plans to further develop (e.g. 25% of the road and electrical systems and 75% of site grading is yet to be completed), market and fill this park with private sector industry, like but not necessarily limited to, Theragenics type companies. In order to ascertain the appropriate manner in which we should target industry types, CROET, in partnership with the City of Oak Ridge and the Oak Ridge Chamber's New Century Alliance, commissioned a study by *Fluor Global Services* (Exhibit F), one of the preeminent industrial site location firms in the world. The study identified our strengths and weaknesses and developed cluster groupings of industry types that

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770.7(a)(1)(iii) - Continued

we should recruit. One of the weaknesses identified by *Fluor* was the lease of Heritage Center, noting that the lease mechanism would somewhat limit our capability to attract companies. We have had recent direct experience regarding this limitation in that *Holrob*, one of the most successful developers in the region, has after many months of negotiation, indicated that the inability to purchase a parcel in Horizon Center fee-simple will inhibit them from developing a much needed speculative building in the park (Exhibit G). While the lease mechanism does provide opportunities, fee-simple ownership by CROET is imperative for the ultimate development of the center, development that will result in as much as 4,000,000 square feet (Exhibit H) of high-technology based industrial and business development with a potential of 1100 to upwards of 6000 jobs depending on the types of industry successfully recruited.

770.7(1)(a)(iv) Information supporting the economic viability of the proposed development

The aforementioned studies by Lockwood Greene Consulting and Flour Global provide a basis for appreciating the potential for this industrial/business park, however the viability of the park has already been proven by the location of Theragenics, that company's desire to option an additional 21 acres and by the numerous inquiries from national and international site selectors, real estate professionals, and the State's Department of Economic and Community Development. The park is just in its first year of operation, yet interest continues to be strong even during an

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770.7(1)(a)(iv) Economic viability - Continued

economic downturn, underscoring the park's established viability.

770.7(1)(a)(v) The consideration offered and any financial requirements

CROET requests DOE to transfer ownership of the 1000-acre parcel to CROET at less than fair market value or without consideration for the reasons stated in the Supplementary Section of the Interim Rule, Section II, Section by Section Discussion, 5. Section 770.8 (Transfer for Less Than Fair Market Value). DOE has the authority to transfer the property at less than fair market value in order to help the local communities recover from the effects of downsizing. As a result of this downsizing the region has experienced 5898 DOE related job losses during the reporting period 1994-1999. Recent reports indicate that 100's of additional jobs are currently at risk during the FY2003 Budget cycle.

Significant consideration should also be given to the considerable investment (~\$9.5 million) already made by CROET and others in the infrastructure improvements made to make the park economically viable. In addition, it is anticipated that CROET will be expected to undertake expenditures for the continued monitoring and safeguarding of the environmentally sensitive areas (contained within the "Natural Area") in and around this parcel.

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770.7(1)(a)(v) The consideration offered and any financial requirements - Continued

Lastly, CROET has developed a business model in which properties at the nearby Heritage Center (The former K-25 site) have been leased as part of an overall strategy to recruit private sector industries (i.e. Jobs) to the region. Some of these properties at Heritage Center are marginal and need to be upgraded in order to maintain their marketability to private sector companies. Revenue derived from the sale of parcels at Horizon Center will provide an opportunity for CROET to upgrade the Heritage properties resulting in lease rates approaching region market value which, in turn, will provide an income stream that can be used synergistically for the further development of the Horizon Center. The upgrading and/or further development of these properties will enable CROET to recruit the right types of companies - companies that can create jobs to potentially mitigate the adverse effects of those jobs being lost through DOE downsizing. For these reasons, CROET requests that the property be offered without consideration.

770.7(a)(2) The person or entity should state in the proposal whether it is or is not requesting indemnification against claims based on the release or threatened release of a hazardous substance or pollutant or contaminant resulting from DOE activities

CROET requests indemnification against claims based on the release or threatened release of hazardous substance or pollutant or contaminant resulting from DOE activities. As indicated by

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770.7(a)(2) Requesting indemnification against claims - Continued

the Supplementary Section of the Interim Rule, Section II. Section by Section Discussion, 4. Section 770.7 (Transfer Process), "A proposal should explicitly state if indemnification against claims is or is not being requested, and, if requested, the specific reasons for the request."

As justification for requested indemnification, CROET cites a section of the Environmental Assessment for the 957.16 acre parcel (3.4.1 Surface water) which states, "East Fork Poplar Creek (EFPC) ... is a moderately wide ... fourth-order stream that bisects Parcel ED-1 ... EFPC originates within the Y-12 Plant, and upstream reaches have sustained considerable impacts and received substantial amounts of contamination in the more than 50-years that the Plant has operated." A recent news article in the Knoxville News Sentinel indicate that the contamination of this creek continues to be problematic (Exhibit I). Based on uncertainties regarding this stream, CROET believes it prudent to request indemnification.

A certification that the requesting party (CROET) has not caused contamination on the property is attached to this proposal (Exhibit J).



Community Reuse Organization
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August 19, 2002

Ms Susan Cange
AU-61
U.S. Department of Energy
P.O. Box 2002
Oak Ridge, Tennessee 37831-2002

Subject: Request to Modify the proposal to transfer Parcel ED-1 under 10 CFR Part 770.

Ms. Cange:

As you may be aware, the Community Reuse Organization of East Tennessee (CROET) has, over the past two years, reorganized its corporate structure. One of the key components of this reorganization is the creation of subsidiary companies with CROET acting as a quasi-holding company for these subsidiaries.

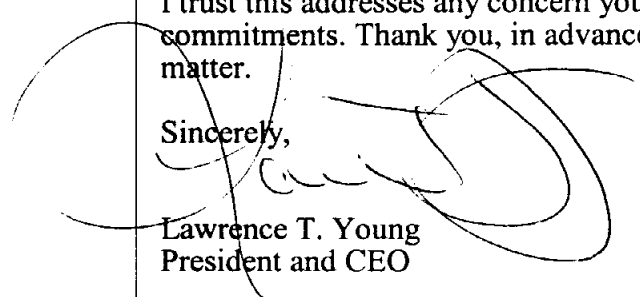
Currently there are three subsidiary companies, one of which is *Horizon Center, LLC*. Our intention, since the inception of these companies, has been for Parcel ED-1, whether under lease or fee-simple ownership, to reside within this subsidiary company. We have created these entities for a variety of reasons including, but not limited to, operational efficiency, enhanced mission focus and litigation protection.

With this transmittal, I am requesting that the proposal submitted in February of this year to transfer Parcel ED-1 (Horizon Center) under 10 CFR Part 770 from DOE to CROET be modified to instead transfer said parcel to the *Horizon Center, LLC*.

I understand that there may be some concern regarding Horizon Center LLC's ability to pay for commitments made on its behalf. Transferring the developable portions of Horizon Center along with the commensurate lease modification of the "natural area" to Horizon Center, LLC, will provide the wherewithal to defray the costs of monitoring and mitigation of the sensitive/natural area. As you know, Horizon Center already derives income from the subleases on the property. In the highly unlikely event that there should be a shortfall in Horizon Center, LLC revenues, we are structured in a manner that would permit sister companies to loan funds to Horizon Center, LLC.

I trust this addresses any concern you may have regarding our ability to fulfill commitments. Thank you, in advance, for your positive assistance in this matter.

Sincerely,



Lawrence T. Young
President and CEO

c: William Snyder
Robert Brown

The CROET Family of Companies:

Heritage Development Corporation • Horizon Development Corporation • Heritage Railroad Corporation • Vista Corporation

APPENDIX B

FEDERAL REGISTER NOTICE OF RULE

§ 299.1 Prescribed forms.

Form No.	Edition date	Title
I-129W	12-22-99	H-1B Data Collection and Filing Fee Exemption.

7. Section 299.5 is amended in the table by revising the entry for Form "129W" to read as follows:

§ 299.5 Display of control numbers.

INS form No.	INS form title	Currently assigned OMB Control No.
I-129W	H-1B Data Collection and Filing Fee Exemption	1115-0225

Dated: February 24, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00-4766 Filed 2-28-00; 8:45 am]

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DEPARTMENT OF ENERGY

[Docket No. FM-RM-99-RPROP]

10 CFR PART 770

RIN 1901-AA82

Transfer of Real Property at Defense Nuclear Facilities for Economic Development

AGENCY: Department of Energy.

ACTION: Interim final rule and opportunity for public comment.

SUMMARY: The Department of Energy (DOE) is establishing a process for disposing of unneeded real property at DOE's defense nuclear facilities for economic development. Section 3158 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, directs DOE to prescribe regulations which describe procedures for the transfer by sale or lease of real property at such defense nuclear facilities. Transfers of real property under these regulations are intended to offset negative impacts on communities caused by unemployment from related DOE downsizing, facility closeouts and work force restructuring at these

facilities. Section 3158 also provides discretionary authority to the Secretary to indemnify transferees of real property at DOE defense nuclear facilities. This regulation sets forth the indemnification procedures.

EFFECTIVE DATE: This rule is effective February 29, 2000. Comments on the interim final rule should be submitted by April 14, 2000. Those comments received after this date will be considered to the extent practicable.

ADDRESSES: Send comments (3 copies) to James M. Cayce, U.S. Department of Energy, Office of Management and Administration, MA-53, 1000 Independence Avenue, SW, Washington, D.C. 20585. The comments will be included in Docket No. FM-RM-99-PROP and they may be examined between 9:00 a.m. and 4:00 p.m. at the U.S. Department of Energy Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586-6020.

FOR FURTHER INFORMATION CONTACT: James M. Cayce, U.S. Department of Energy, MA-53, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586-0072.

SUPPLEMENTARY INFORMATION:**I. Background**

DOE's real property consists of about 2.4 million acres and over 21,000 buildings, trailers, and other structures and facilities. In the eight years since the end of the Cold War, DOE has been engaged in a two-part process in which DOE reexamines its mission need for real property holdings, and then works to clean up the land and facilities that have been contaminated with hazardous chemicals and nuclear materials. The end result will be the availability, over time and to widely varying degree at DOE sites, of real property for transfer. DOE may sell or lease real property under a number of statutory authorities. The primary authorities are section 161g of the Atomic Energy Act (42 U.S.C. 2201(g)) and sections 646(c)-(f) (also known as the "Hall Amendment") and 649 of the Department of Energy Organization Act, as amended (42 U.S.C. 7256(c)-(f) and 7259). Section 161g of the Atomic Energy Act broadly authorizes DOE to transfer real property by sale or lease to another party. Section 649 applies to leasing of underutilized real property. Section 646(c)-(f) applies to specific facilities that are to be closed or reconfigured. In addition, DOE may declare real property as "excess, underutilized, or temporarily underutilized," and dispose of such real property under provisions of the Federal

Property and Administrative Services Act, 40 U.S.C. 472 *et seq.* With the exception of sections 646(c)-(f) of the DOE Organization Act, these authorities do not deal specifically with transfer of real property for economic development.

In section 3158 of the National Defense Authorization Act for Fiscal Year 1998 ("Act"), Congress directed DOE to prescribe regulations specifically for the transfer by sale or lease of real property at DOE defense nuclear facilities for the purpose of permitting economic development (42 U.S.C. 7274q(a)(1)). Section 3158 also provides that DOE may hold harmless and indemnify a person or entity to whom real property is transferred against any claim for injury to person or property that results from the release or threatened release of a hazardous substance, pollutant or contaminant as a result of DOE (or predecessor agency) activities at the defense nuclear facility (42 U.S.C. 7274q(b)). The indemnification provision in section 3158 is similar to provisions enacted for the Department of Defense Base Realignment and Closure program under Section 330 of the Defense Authorization Act for Fiscal Year 1993, Public Law 102-484.

The indemnification provisions in section 3158 aid these transfers for economic development because, even at sites that have been remediated in accordance with applicable regulatory requirements, uncertainty and risk to capital may be presented by the possibility of as-yet undiscovered contamination remaining on the property. Potential buyers and lessees of real property at defense nuclear facilities have sometimes expressed a need to be indemnified as part of the transfer. Furthermore, indemnification often is requested by lending or underwriting institutions which finance the purchase, redevelopment, or future private operations on the transferred property to protect their innocent interests in the property.

Indemnification may be granted under this rule when it is deemed essential for facilitating local reuse or redevelopment as authorized under 42 U.S.C. 7274q.

This rule is not intended to affect implementation of the Joint Interim Policy that DOE and the Environmental Protection Agency (EPA) entered into on June 21, 1998, to implement the consultation provisions of the Hall Amendment (42 U.S.C. 7256(e)). The Joint Interim Policy provides specific direction for instances in which Hall Amendment authority is used by DOE to enter into leases at DOE sites which are on the EPA's National Priorities List. As

stated in the scope of the joint policy, at National Priorities List sites, EPA was given the authority to concur in the DOE determination that the terms and conditions of a lease agreement are "consistent with safety and protection of public health and the environment."

II. Section-by-Section Discussion

The following discussion presents information related to some of the provisions in today's interim final rule, and explains DOE's rationale for those provisions.

1. Section 770.2 (Coverage)

Generally, real property covered by these regulations includes land and facilities at DOE defense nuclear facilities offered for sale or lease for the purpose of permitting the economic development of the property. Leases of improvements to real property that has been withdrawn from the public domain are covered, but not the withdrawn land. If any of these improvements are removable, they can be transferred under this part.

2. Section 770.4 (Definitions)

DOE has included a definition of "Community Reuse Organization" (CRO) in this rule. CROs are established and funded by DOE to implement community transition activities under section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (42 U.S.C. 7274h). Membership in a CRO is composed of a broad representation of persons and entities from the affected communities. The CRO coordinates local community transition planning efforts with the DOE's Federal Advisory Committees, "Site Specific Advisory Boards," and others to counter adverse impacts from DOE work force restructuring. CROs may act as agent or broker for parties interested in undertaking economic development actions, and they can assure a broad range of participation in community transition activities.

Section 3158 defines "defense nuclear facility" by cross-reference to the definition in section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286(g)). These facilities are atomic energy defense facilities involved in production or utilization of special nuclear material; nuclear waste storage or disposal facilities; testing and assembly facilities; and atomic weapons research facilities, which are under the control or jurisdiction of the Secretary of Energy. DOE has identified the facilities receiving funding for atomic energy defense activities (with the exception of activities under Office of Naval Reactors) which are covered by the

definition. A list of these defense nuclear facilities is included at the end of this section-by-section discussion for the convenience of the interested public.

"Excess real property" is DOE property that, after screening at all levels of DOE, is found to be unneeded for any of the DOE's missions.

The term "underutilized real property or temporarily underutilized real property" means an entire parcel of real property, or a portion of such property, that is used at irregular intervals or for which the mission need can be satisfied with only a portion of the property. These designations are reviewed on an annual basis by the certified real property specialist at each Field Office.

3. Sections 770.5 and 770.6 (Identification of Real Property for Transfer)

DOE annually conducts surveys of its real property to determine if the property is being fully utilized. In a related process, DOE annually reviews its real property to identify property that is no longer needed for DOE missions. Real property covered by this part will be initially identified by these two processes. Under this part, Field Office Managers will provide the established CRO, and other interested persons and entities with a list of the real property that may be transferred under these regulations. Field Office Managers may make this list available by mail to known entities, or other means (such as posting on DOE Internet sites), or upon request. DOE will provide existing information on listed property, including its policies under the relevant transfer authority, information on the physical condition of the property, environmental reports, safety reports, known use restrictions, leasing term limitations and other pertinent information. Section 770.6 provides that a CRO or other person or entity may request that the Field Office Manager make available specific real property for possible transfer in support of economic development.

4. Section 770.7 (Transfer Process)

To initiate the transfer process, the potential purchaser or lessee must prepare and provide to the Field Office Manager a proposal for the transfer of real property at a defense nuclear facility for economic development. The proposal must contain enough detail for DOE to make an informed determination that the transfer, by sale or lease, would be in the best interest of the Government. Every proposal must include the information specified in section 770.7(a)(1) relating to the scope

and economic development impact of the proposed transfer. A proposal must include: a description of the real property proposed to be transferred; the intended use and duration of use of the real property; a description of the economic development that would be furthered by the transfer (e.g., jobs to be created or retained, improvements to be made); information supporting the economic viability of the proposed development; and the consideration offered and any financial requirements. A proposal also should explicitly state if indemnification against claims is or is not being requested, and, if requested, the specific reasons for the request and a certification that the requesting party has not caused contamination on the property. This requirement stems from section 3158(b) of the Act, which requires DOE to include in any agreement for the sale or lease of real property provisions stating whether indemnification is or is not provided (42 U.S.C. 7274g(b)).

Paragraph 770.7(b) provides that DOE will review a proposal and within 90 days notify the person or entity submitting the proposal of its decision on whether the transfer is in the best interest of the Government and DOE's intent to proceed with development of a transfer agreement. DOE may consider a variety of factors in making its decision, such as the adverse economic impacts of DOE downsizing and realignment on the region, the public policy objectives of the laws governing the downsizing of DOE's production complex, the extent of state and local investment in any proposed projects, the potential for short- and long-term job generation, the financial responsibility of the proposer, current market conditions, and potential benefits to the federal government from the transfer. Since many defense nuclear facilities have ongoing missions, particular transfers may be subject to use restrictions that are made necessary by specific security, safety, and environmental requirements of the DOE facility. If DOE does not find the transfer is in the best interest of the Government and will not pursue a transfer agreement, it will, by letter, inform the person or entity that submitted it of DOE's decision and reasons. Agreement by DOE to pursue development of a transfer agreement does not commit DOE to the project or constitute a final decision regarding the transfer of the property.

Section 3158 of the Act prohibits DOE from transferring real property for economic development until 30 days have elapsed following the date on which DOE notifies the defense

committees of Congress of the proposed transfer of real property. Therefore, if DOE determines that a proposal would be in the best interest of the Government, it then will notify the congressional defense committees of the proposed transfer. In particular instances, it is possible that this notification requirement may delay the development of the transfer agreement.

Before a proposed transfer agreement is finalized, the Field Office Manager must ensure that DOE's National Environmental Policy Act (NEPA) environmental review process is completed. Depending on the transfer authority used and the condition of the real property, other agencies may need to review or concur with the terms of the agreement. For example, for Hall Amendment leases at National Priorities List sites, EPA was given the authority to concur in the DOE determination that the terms and conditions of a lease agreement are consistent with safety and the protection of public health and the environment. The DOE will also comply with any other applicable land transfer statutes.

DOE has established policy that requires public participation in the land and facility planning, management, and disposition decision process (under DOE O 403.1A, Life Cycle Asset Management). Generally, because the proposals are likely to be generated by or in coordination with a CRO, a separate public involvement process should not be necessary. However, there may be instances in which a specific authority requires separate or additional procedures (e.g., commitments in agreements signed with tribal, state, or local governments).

5. Section 770.8 (Transfer for Less Than Fair Market Value)

The House Conference Report for the Act (105-340) noted that DOE should address in this part, when it is appropriate for DOE to transfer or lease real property below fair market value or at fair market value. DOE will generally pursue fair market value for real property transferred for economic development. DOE may, however, agree to sell or lease such property for less than fair market value if the statutory transfer authority used imposes no market value restriction and the real property requires considerable infrastructure improvements to make it economically viable, or if in DOE's judgment a conveyance at less than market value would further the public policy objectives of the laws governing the downsizing of defense nuclear facilities. DOE has the authority to transfer real and personal property at

less than fair market value (or without consideration) in order to help local communities recover from the effects of downsizing of defense nuclear facilities.

6. Sections 770.9-770.11 (Indemnification)

DOE real property often is viewed by the public as a potential liability even if it has been cleaned to specific regulatory requirements. To improve the marketability of previously contaminated land and facilities, DOE may indemnify a person or entity to whom real property is transferred for economic development against any claim for injury to persons or property that results from the release or threatened release of a hazardous substance, pollutant or contaminant attributable to DOE (or predecessor agencies).¹ DOE will enter into an indemnification agreement under this rule if a person or entity requests it, and indemnification is deemed essential for the purposes of facilitating reuse or redevelopment. A claim for injury to person or property will be indemnified only if an indemnification provision is included in the agreement for sale or lease and in subsequent deeds or leases.

This general DOE indemnification policy is subject to the conditions in section 770.9 of this part. As provided by section 3158(c)(1) of the Act (42 U.S.C. 7274q(c)(1)), a person or entity who requests indemnification under a transfer agreement must notify DOE (the Field Office Manager) in writing within two years after the claim accrues.

Section 770.9 contains several other requirements and conditions that are taken from section 3158(c)(1) of the Act. The person or entity requesting indemnification for a particular claim must furnish the Field Office Manager pertinent papers regarding the claim received by the person or entity, and any evidence or proof of the claim; and must permit access to records and personnel for purposes of defending or settling the claim.

DOE also is prohibited by section 3158(b)(3) from indemnifying a person or entity for a claim "to the extent the persons and entities * * * contributed to any such release or threatened release" (42 U.S.C. 7274q(b)(3)). This

¹ Regardless of the existence of an indemnification agreement, DOE would be responsible for the release, or threatened release of a hazardous substance or pollutant or contaminant resulting from the activities of DOE or its predecessor agencies, if the property was not remediated to required standards. This would also apply to early transfers, by sale or lease, of contaminated real property under Section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9620(h)(3)(C).

limitation on DOE's ability to indemnify potentially liable parties is included in the rule in paragraph 770.9(b).

One additional statutory limitation on indemnification is that DOE may not indemnify a transferee for a claim, even if an indemnification agreement exists, if the person requesting indemnification does not allow DOE to settle or defend the claim. This limitation is in paragraph 770.9(c), and it is required by section 3158(d)(2) of the Act (42 U.S.C. 7274q(d)(2)).

Section 770.10 provides, as stipulated in the Act, that if an indemnification claim is denied by DOE, the person or entity must be informed through a notice of final denial of a claim by certified or registered mail. If the person or entity wishes to contest the denial, then that person or entity must begin legal action within six months after the date of mailing of a notice of final denial of a claim by DOE. (42 U.S.C. 7274q(c)(1)).

Section 770.11 incorporates the Act's provision that a claim "accrues" on the date on which the person asserting the claim knew (or reasonably should have known) that the injury to person or property was caused or contributed to by the release or threatened release of a hazardous substance, pollutant, or contaminant as a result of DOE activities at the defense nuclear facility on which the real property is located. (42 U.S.C. 7274q(c)(2)). DOE may not waive this timeliness requirement.

Appendix to Preamble of 10 CFR Part 770

List of Defense Nuclear Facilities: This list consists of the defense nuclear facilities noted as covered facilities in House Report 105-137, and is not meant to be inclusive.

Argonne National Laboratory
Brookhaven National Laboratory
Fernald Environmental Management Project Site
Hanford Site
Idaho National Engineering and Environmental Laboratory
Kansas City Plant
K-25 Plant (East Tennessee Technology Park)
Lawrence Livermore National Laboratory
Los Alamos National Laboratory
Mound Facility
Nevada Test Site
Oak Ridge Reservation
Oak Ridge National Laboratory
Paducah Gaseous Diffusion Plant
Pantex Plant
Pinellas Plant
Portsmouth Gaseous Diffusion Plant
Rocky Flats Environmental Technology Site

Sandia National Laboratory
Savannah River Site
Waste Isolation Pilot Project
Y-12 Plant

III. Public Comment

The interim final rule published today relates to public property and, therefore, is exempt from the notice and comment rulemaking requirements in the Administrative Procedure Act, 5 U.S.C. 553. Nonetheless, DOE is providing an opportunity for interested persons to submit written comments on the interim final rule. Three copies of written comments should be submitted to the address indicated in the ADDRESSES section of this rule. All comments received will be available for public inspection in the Department of Energy Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 9 a.m. and 4 p.m., Monday through Friday, except federal holidays. All written comments received on or before the date specified in the beginning of this rule will be considered by DOE. Comments received after that date will be considered to the extent that time allows.

Any person submitting information or data that is believed to be confidential, and exempt by law from public disclosure, should submit one complete copy of the document and two additional copies from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information and treat it as provided in 10 CFR 1004.11.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Today's

interim final rule concerning the sale or lease of real property at defense nuclear facilities is not subject to the Regulatory Flexibility Act because neither the Administrative Procedure Act (5 U.S.C. 553(a)(2)), nor any other law requires DOE to propose the rule for public comment.

C. Review Under the Paperwork Reduction Act

No new collection of information is imposed by this interim final rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

Under the Council on Environmental Quality regulations (40 CFR Parts 1500-1508), DOE has established guidelines for its compliance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). This interim final rule establishes procedures for real property transfers for economic development. Because the rule is procedural, it is covered by the Categorical Exclusion in paragraph A6 of Appendix A to Subpart D, 10 CFR Part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required. As paragraph 770.3(b) of the rule notes, individual proposals for the transfer of property are subject to appropriate NEPA review.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the federal government and the states, or in the distribution of power and responsibilities among the various levels of government. DOE has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132, and has determined that this rule will not have a substantial direct effect on states, the established relationship between the states and the federal government or the distribution of power and responsibilities among the various levels of government.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on federal agencies the general

duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) Clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that this interim final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4) requires each federal agency to prepare a written assessment of the effects of any federal mandate in a proposed or final rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million in any one year. The Act also requires a federal agency to develop an effective process to permit timely input by elected officers of state, local, and tribal governments on a proposed "significant intergovernmental mandate," and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect small governments. The interim final rule published today does not contain any federal mandate, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires federal agencies to issue a Family Policymaking Assessment for any

proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's interim final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

List of Subjects in Part 770

Federal buildings and facilities, Government property, Government property management, Hazardous substances.

Issued in Washington, on January 21, 2000.

Edward R. Simpson,
Acting Director of Procurement and Assistance Management.

For the reasons set forth in the preamble, Title 10, Chapter III, of the Code of Federal Regulations is amended by adding a new part 770 as set forth below:

PART 770—TRANSFER OF REAL PROPERTY AT DEFENSE NUCLEAR FACILITIES FOR ECONOMIC DEVELOPMENT

Sec.

- 770.1 What is the purpose of this part?
- 770.2 What real property does this part cover?
- 770.3 What general limitations apply to this part?
- 770.4 What definitions are used in this part?
- 770.5 How does DOE notify persons and entities that defense nuclear facility real property is available for transfer for economic development?
- 770.6 May interested persons and entities request that real property at defense nuclear facilities be transferred for economic development?
- 770.7 What procedures are to be used to transfer real property at defense nuclear facilities for economic development?
- 770.8 May DOE transfer real property at defense nuclear facilities for economic development at less than fair market value?
- 770.9 What conditions apply to DOE indemnification of claims against a person or entity based on the release or threatened release of a hazardous substance or pollutant or contaminant attributable to DOE?
- 770.10 When must a person or entity, who wishes to contest a DOE denial of request for indemnification of a claim, begin legal action?

770.11 When does a claim "accrue" for purposes of notifying the Field Office Manager under § 770.9(a) of this part?

Authority: 42 U.S.C. 7274q.

§ 770.1 What is the purpose of this part?

(a) This part establishes how DOE will transfer by sale or lease real property at defense nuclear facilities for economic development.

(b) This part also contains the procedures for a person or entity to request indemnification for any claim that results from the release or threatened release of a hazardous substance or pollutant or contaminant as a result of DOE activities at the defense nuclear facility.

§ 770.2 What real property does this part cover?

(a) DOE may transfer DOE-owned real property by sale or lease at defense nuclear facilities, for the purpose of permitting economic development.

(b) DOE may transfer, by lease only, improvements at defense nuclear facilities on land withdrawn from the public domain, that are excess, temporarily underutilized, or underutilized, for the purpose of permitting economic development.

§ 770.3 What general limitations apply to this part?

(a) Nothing in this part affects or modifies in any way section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)).

(b) Individual proposals for transfers of property are subject to NEPA review as implemented by 10 CFR Part 1021.

(c) Any indemnification agreed to by the DOE is subject to the availability of funds.

§ 770.4 What definitions are used in this part?

Community Reuse Organization or CRO means a governmental or non-governmental organization that represents a community adversely affected by DOE work force restructuring at a defense nuclear facility and that has the authority to enter into and fulfill the obligations of a DOE financial assistance agreement.

Claim means a request for reimbursement of monetary damages.

Defense Nuclear Facility means "Department of Energy defense nuclear facility" within the meaning of section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286g).

DOE means the United States Department of Energy.

DOE Field Office means any of DOE's officially established organizations and components located outside the

Washington, D.C., metropolitan area. (See Field Office Manager.)

Economic Development means the use of transferred DOE real property in a way that enhances the production, distribution, or consumption of goods and services in the surrounding region(s) and furthers the public policy objectives of the laws governing the downsizing of DOE's defense nuclear facilities.

Excess Real Property means any property under DOE control that the Field Office, cognizant program, or the Secretary of Energy have determined, according to applicable procedures, to be no longer needed.

Field Office Manager means the head of the DOE Operations Offices or Field Offices associated with the management and control of defense nuclear facilities.

Hazardous Substance means a substance within the definition of "hazardous substances" in subchapter I of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601(14)).

Indemnification means the responsibility for reimbursement of payment for any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage, including business losses consistent with generally accepted accounting practices, which involve the covered real property transfers. Indemnification payments are subject to the availability of appropriated funds.

Person or Entity means any state, any political subdivision of a state or any individual person that acquires ownership or control of real property at a defense nuclear facility.

Pollutant or Contaminant means a substance identified within the definition of "pollutant or contaminant" in section 101(33) of CERCLA (42 U.S.C. 9601(33)).

Real Property means all interest in land, together with the improvements, structures, and fixtures located on the land (usually including prefabricated or movable structures), and associated appurtenances under the control of any federal agency.

Release means a "release" as defined in subchapter I of CERCLA (42 U.S.C. 9601(22)).

Underutilized Real Property or Temporarily Underutilized Real Property means the entire property or a portion of the real property (with or without improvements) that is used only at irregular intervals, or which is used by current DOE missions that can be satisfied with only a portion of the real property.

§ 770.5 How does DOE notify persons and entities that defense nuclear facility real property is available for transfer for economic development?

(a) Field Office Managers annually make available to Community Reuse Organizations and other persons and entities a list of real property at defense nuclear facilities that DOE has identified as appropriate for transfer for economic development. Field Office Managers may use any effective means of publicity to notify potentially-interested persons or entities of the availability of the list.

(b) Upon request, Field Office Managers provide to interested persons and entities relevant information about listed real property, including information about a property's physical condition, environmental, safety and health matters, and any restrictions or terms of transfer.

§ 770.6 May interested persons and entities request that real property at defense nuclear facilities be transferred for economic development?

Any person or entity may request that specific real property be made available for transfer for economic development pursuant to procedures in § 770.7. A person or entity must submit such a request in writing to the Field Office Manager who is responsible for the real property.

§ 770.7 What procedures are to be used to transfer real property at defense nuclear facilities for economic development?

(a) *Proposal.* The transfer process starts when a potential purchaser or lessee submits to the Field Office Manager a proposal for the transfer of real property that DOE has included on a list of available real property, as provided in § 770.5 of this part.

(1) A proposal must include (but is not limited to):

- (i) A description of the real property proposed to be transferred;
- (ii) The intended use and duration of use of the real property;
- (iii) A description of the economic development that would be furthered by the transfer (e.g., jobs to be created or retained, improvements to be made);
- (iv) Information supporting the economic viability of the proposed development; and
- (v) The consideration offered and any financial requirements.

(2) The person or entity should state in the proposal whether it is or is not requesting indemnification against claims based on the release or threatened release of a hazardous substance or pollutant or contaminant resulting from DOE activities.

(3) If a proposal for transfer does not contain a statement regarding indemnification, the Field Office Manager will notify the person or entity by letter of the potential availability of indemnification under this part, and will request that the person or entity either modify the proposal to include a request for indemnification or submit a statement that it is not seeking indemnification.

(b) *Decision to transfer real property.* Within 90 days after receipt of a proposal, DOE will notify, by letter, the person or entity that submitted the proposal of DOE's decision whether or not a transfer of the real property by sale or lease is in the best interest of the Government. If DOE determines the transfer is in the Government's best interest, then the Field Office Manager will begin development of a transfer agreement.

(c) *Congressional committee notification.* DOE may not transfer real property under this part until 30 days have elapsed after the date DOE notifies congressional defense committees of the proposed transfer. The Field Office Manager will notify congressional defense committees through the Secretary of Energy.

(d) *Transfer.* After the congressional committee notification period has elapsed, the Field Office Manager:

- (1) Finalizes negotiations of a transfer agreement, which must include a provision stating whether indemnification is or is not provided;
- (2) Ensures that any required environmental reviews have been completed; and
- (3) Executes the documents required for the transfer of property to the buyer or lessee.

§ 770.8 May DOE transfer real property at defense nuclear facilities for economic development at less than fair market value?

DOE generally attempts to obtain fair market value for real property transferred for economic development, but DOE may agree to sell or lease such property for less than fair market value if the statutory transfer authority used imposes no market value restriction, and:

- (a) The real property requires considerable infrastructure improvements to make it economically viable, or
- (b) A conveyance at less than market value would, in the DOE's judgment, further the public policy objectives of the laws governing the downsizing of defense nuclear facilities.

§ 770.9 What conditions apply to DOE indemnification of claims against a person or entity based on the release or threatened release of a hazardous substance or pollutant or contaminant attributable to DOE?

(a) If an agreement for the transfer of real property for economic development contains an indemnification provision, the person or entity requesting indemnification for a particular claim must:

(1) Notify the Field Office Manager in writing within two years after such claim accrues under § 770.11 of this part;

(2) Furnish the Field Office Manager, or such other DOE official as the Field Office Manager designates, with evidence or proof of the claim;

(3) Furnish the Field Office Manager, or such other DOE official as the Field Office Manager designates, with copies of pertinent papers (e.g., legal documents) received by the person or entity;

(4) If requested by DOE, provide access to records and personnel of the person or entity for purposes of defending or settling the claim; and

(5) Provide certification that the person or entity making the claim did not contribute to any such release or threatened release.

(b) DOE will enter into an indemnification agreement if DOE determines that indemnification is essential for the purpose of facilitating reuse or redevelopment.

(c) DOE may not indemnify any person or entity for a claim if the person or entity contributed to the release or threatened release of a hazardous substance or pollutant or contaminant that is the basis of the claim.

(d) DOE may not indemnify a person or entity for a claim made under an indemnification agreement if the person or entity refuses to allow DOE to settle or defend the claim.

§ 770.10 When must a person or entity, who wishes to contest a DOE denial of request for indemnification of a claim, begin legal action?

If DOE denies the claim, DOE must provide the person or entity with a notice of final denial of the claim by DOE by certified or registered mail. The person or entity must begin legal action within six months after the date of mailing.

§ 770.11 When does a claim "accrue" for purposes of notifying the Field Office Manager under § 770.9(a) of this part?

For purposes of § 770.9(a) of this part, a claim "accrues" on the date on which the person asserting the claim knew, or reasonably should have known, that the

injury to person or property was caused or contributed to by the release or threatened release of a hazardous substance, pollutant, or contaminant as a result of DOE activities at the defense nuclear facility on which the real property is located.

[FR Doc. 00-4787 Filed 2-24-00; 4:07 pm]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-262-AD; Amendment 39-11602; AD 2000-04-19]

RIN 2120-AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Dassault Model Mystere-Falcon 50 series airplanes, that currently requires a revision to the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include procedures to use certain values to correctly gauge the minimum allowable N1 speed of the operative engines during operation in icing conditions. This amendment adds a new requirement for operators to adjust the thrust reverser handle stop, install new wiring, and modify the Digital Electronic Engine Control (DEEC) software, which terminates the AFM revision. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent flightcrew use of erroneous N1 thrust setting information displayed on the Engine Indication Electronic Display (EIED), which could result in in-flight shutdown of engine(s).

DATES: Effective April 4, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the Federal Aviation Administration

(FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97-21-16, amendment 39-10202 (62 FR 60773, November 13, 1997), which is applicable to certain Dassault Model Mystere-Falcon 50 series airplanes, was published in the **Federal Register** on November 3, 1999 (64 FR 59685). The action proposed to retain the requirement to revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include procedures to use certain values to correctly gauge the minimum allowable N1 speed of the operative engines during operation in icing conditions, and add a new requirement for adjustment of the thrust reverser handle stop, installation of new wiring, and modification of the Digital Electronic Engine Control (DEEC) software, which would terminate the need for the AFM revision.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Requests To Revise Applicability

One commenter, the manufacturer, suggests that the applicability be revised to exclude airplanes on which Dassault Factory Modification M2193 has been accomplished. The commenter notes that this modification is equivalent to Dassault Service Bulletin F50-276, dated June 24, 1998 (which was cited in the AD as the appropriate source of service information). The FAA concurs. The actions described in the referenced Dassault service bulletin constitute terminating action for the requirements of this AD; therefore, airplanes on which the service bulletin has been accomplished are excluded in the applicability of the AD. Since Dassault Modification M2193 is equivalent to that service bulletin, the FAA has revised the final rule to also exclude airplanes having this production modification.

The same commenter also requests that the applicability of the proposed AD be revised in regard to the listing of affected airplanes. The commenter notes that the proposed AD applies to "serial numbers 251, 253, and subsequent, equipped with Allied-Signal TFE731-40 engines * * *." The commenter suggests that the applicability be expanded to include any Falcon 50 series airplane retrofitted with Dassault Service Bulletin F50-280 or Dassault Factory Modification 2518, since this service bulletin describes procedures for installation of Allied-Signal TFE731-40 engines on any Model Mystere-Falcon 50 series airplane, including serial numbers prior to 251.

The FAA does not concur. The FAA acknowledges that all airplanes equipped with the referenced engine type should also be subject to the requirements of this AD, if all actions required by this AD have not been accomplished. However, after further discussions with the manufacturer, the FAA has been advised that Dassault Service Bulletin F50-280 is in the process of review, but has not been released, nor has the equivalent Dassault Modification 2518 been approved. The FAA does not consider it appropriate to delay issuance of this final rule while awaiting such approval; therefore, no change is made to the applicability of the AD in this regard. If the engine retrofit service information is approved, the FAA will consider further rulemaking, if necessary, to apply the requirements of this AD to additional airplanes.

Request To Revise Number of Affected Airplanes

The same commenter states that the estimate of 7 affected airplanes is incorrect in the cost impact information of the proposed AD, since other airplanes may have the Allied-Signal TFE731-40 engines installed as a retrofit, as discussed in the previous comment. The FAA infers that the commenter is requesting that the number of affected airplanes be increased. However, since the previously described engine retrofit service information has not been approved, no airplanes on the U.S. Register should have had such a modification at this time. No change to the AD is necessary in this regard.

Request To Revise Cost Estimate

The same commenter states that the estimate of 2 work hours is conservative in that it does not include hours necessary to gain access, remove and replace the unit, and perform engine ground runs and/or flight tests. The

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APPENDIX C
FLOODPLAIN ASSESSMENT

**FLOODPLAIN ASSESSMENT
PROPOSED TITLE TRANSFER OF PARCEL ED-1**



November 2002

**U.S. Department of Energy
Oak Ridge Operations
Oak Ridge, Tennessee**

**FLOODPLAIN ASSESSMENT
PROPOSED TITLE TRANSFER OF PARCEL ED-1**

Date Issued—November 2002

U.S. Department of Energy
Oak Ridge Operations
Oak Ridge, Tennessee

SCIENCE APPLICATIONS INTERNATIONAL CORPORATION

contributed to the preparation of this document and should not
be considered an eligible contractor for its review.

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ABBREVIATIONS AND ACRONYMS

<i>CFR</i>	<i>Code of Federal Regulations</i>
CWA	Clean Water Act of 1972
DOE	U.S. Department of Energy
ORO	Oak Ridge Operations Office
ORR	Oak Ridge Reservation
TDEC	Tennessee Department of Environment and Protection
TVA	Tennessee Valley Authority
USACE	U.S. Army Corps of Engineers

1. INTRODUCTION

This floodplain assessment has been prepared in accordance with the *Code of Federal Regulations (CFR)* Title 10 Part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements for the purpose of fulfilling the U.S. Department of Energy's (DOE's) responsibilities under Executive Order 11988 "Floodplain Management." Executive Order 11988 encourages measures to preserve and enhance the natural and beneficial functions of floodplains. They also require federal agencies to avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of floodplains, and to avoid direct and indirect support of floodplain development whenever there is a practicable alternative.

A floodplain, according to 10 *CFR* 1022, means the lowlands adjoining inland and coastal waters and relatively flat areas and floodprone areas of offshore islands including, at a minimum, that area inundated by a 1 percent or greater chance flood in any given year. The base floodplain is defined as the 100-year (1.0 percent) floodplain. The critical action floodplain is defined as the 500-year (0.2 percent) floodplain.

Additionally, 10 *CFR* 1022 applies to activities in furtherance of DOE responsibilities for acquiring, managing, and disposing of federal lands and facilities. When property in a floodplain or wetlands is proposed for lease, easement, right-of-way, or disposal (e.g., title transfer) to non-federal public or private parties, DOE shall (1) identify those uses that are restricted under federal, state, or local floodplains or wetlands regulations; (2) attach other appropriate restrictions to uses of the property; or (3) withhold the property from conveyance.

Finally, 10 *CFR* 1022 seeks to provide early and adequate opportunities for public review of plans and proposals involving actions located in a floodplain and/or wetlands.

This floodplain assessment serves to inform the public of proposed activities at the Oak Ridge Reservation (ORR) that have the potential to affect the floodplain on property currently controlled by DOE and to present measures or alternatives to the proposed action that will reduce or mitigate adverse effects. Information is presented on the following topics: project description, floodplain effects, and alternatives. The 100-year flood was chosen as the criterion of evaluation for floodplain effects because no critical actions, as defined in 10 *CFR* 1022 would occur as a result of the proposed action.

2. PROJECT DESCRIPTION

2.1 PROPOSED ACTION

This floodplain assessment evaluates the potential floodplain impacts from the proposed title transfer of the developable portion of Parcel ED-1 (also known as the Horizon Center) to Horizon Center LLC, a subsidiary of the Community Reuse Organization of East Tennessee. Parcel ED-1 consists of approximately 957 acres located in the western portion of the ORR, Roane County, Tennessee (Fig.1). DOE is proposing to transfer approximately 426 developable acres of the parcel. The remaining property, which contains the Natural Area including the majority of the floodplain, wetlands, and other sensitive resources, would stay under DOE ownership and control. Horizon Center LLC would continue to monitor and protect this area under a lease agreement. The potential environmental impacts of the proposed action have been considered in an Environmental Assessment Addendum being prepared by DOE (DOE 2002).

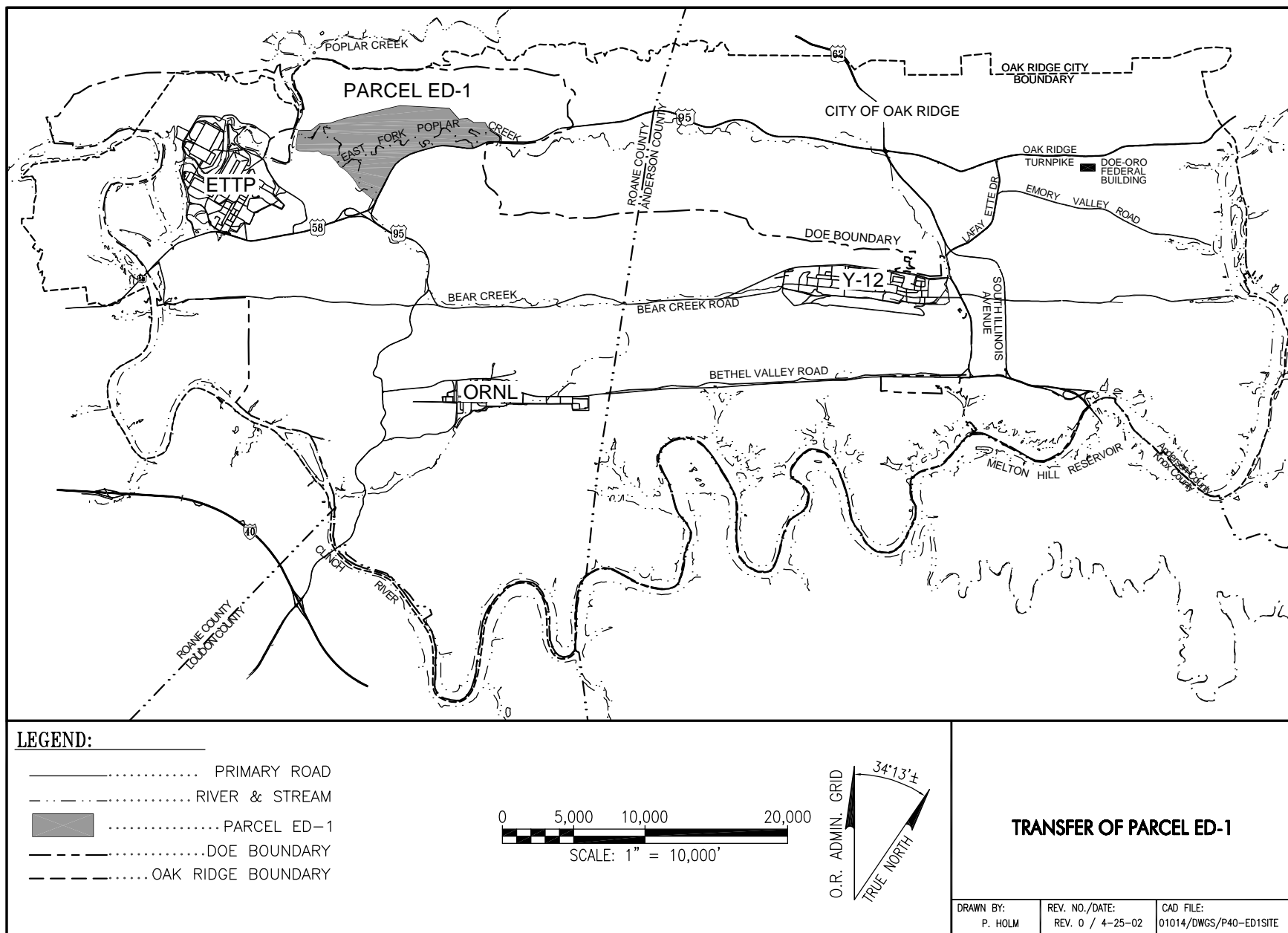


Fig. 1. Parcel ED-1 Vicinity Map

CROET has leased Parcel ED-1 since 1998 for development of an industrial/business park. Under the proposed transfer, Horizon Center LLC would continue the development of the parcel as an industrial/business park for research and development, medical technology, manufacturing, distribution, and corporate headquarters/office facilities. The developable portion of the parcel consists of seven major development areas, ranging in size from 11 to 148 acres. The majority of the remaining (non-developable) portion of Parcel ED-1 is located within the 100-year floodplain of East Fork Poplar Creek (EFPC).

2.2 PARCEL ED-1 FLOODPLAIN

The 100-year floodplain of EFPC within Parcel ED-1 contains approximately 287 acres (Fig. 2). The floodplain is predominantly forested with bottomland hardwoods or pine plantation. The majority of the pine plantations in the area have been severely impacted as a result of infestation by the southern pine beetle (*Dendroctonus frontalis*). Prior to the initial development of the parcel, the predominant land uses were wildlife management, silviculture, ecosystem research, and environmental monitoring. Limited encroachment into the 100-year floodplain occurred during construction of culverts, utilities, bridges, and roads as part of CROET's initial development of Parcel ED-1. The two bridges across EFPC were designed to span the creek so that no portion was located within the creek or floodway. The remainder of the 100-year floodplain has been protected from development activities.

The Tennessee Valley Authority (TVA) conducted a Flood Insurance Study of EFPC to determine the flood profiles for the Federal Emergency Management Agency (FEMA) (FEMA 1984). FEMA used this information to revise existing Flood Insurance Rate Maps of EFPC (FEMA 1985). TVA and the COE amended this study as part of the remedial action plans for removal and containment of contamination within the EFPC floodplain. This contamination was primarily the result of historical mercury releases from the Y-12 Plant located about 14 miles upstream of Parcel ED-1. The closest removal action to the parcel was located approximately 8 miles upstream. Changes to the floodplain and floodway boundaries also resulted from commercial and residential development in the floodplain upstream of Parcel ED-1 and changes in the amount of water discharged from the Y-12 Plant (TVA 1991; COE 1992a). The portion of the EFPC floodplain within Parcel ED-1 is outside of the limits of the existing City of Oak Ridge Flood Insurance Rate Maps.

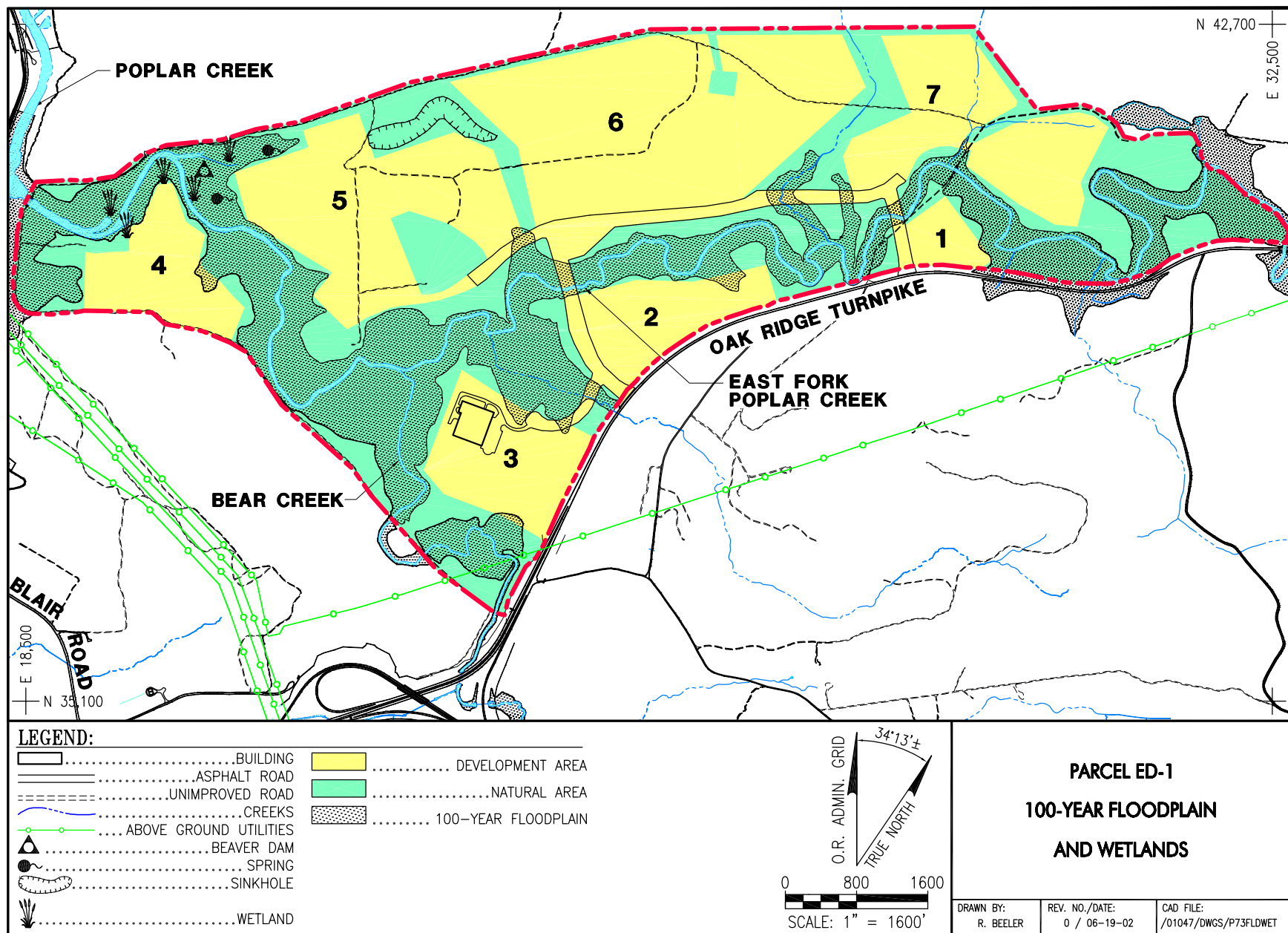


Fig. 2. Location of the 100-year floodplain within Parcel ED-1

3. FLOODPLAIN EFFECTS

3.1 POTENTIAL EFFECTS ON FLOODPLAIN

The proposed transfer of title for a portion of Parcel ED-1 would not inherently cause impacts that affect the floodplain on the parcel because the proposed transfer is an administrative action. The potential for, and degree of, adverse impacts would depend upon how Horizon Center LLC continues the development of Parcel ED-1. Activities associated with subsequent development of the parcel could have beneficial effects or adverse effects on the floodplain. Effects could result from activities occurring directly in the floodplain or indirectly from activities that occur in adjacent areas. The consequences of floodplain alteration might last for decades (long-term effects) or be minor enough that the floodplain could recover in a few years (short-term effects).

Any activity that has the potential to affect the floodplain in any way would be subject to regulation by the federal and/or state government. Horizon Center LLC or any of its successors, transferees, or assigns would be required to comply with applicable federal, state, and local laws, rules, or ordinances governing land use in floodplains, wetlands and streams. It would be the responsibility of Horizon Center LLC or the owner to secure the necessary permits and to comply with all the permit requirements, including compensatory mitigation.

3.1.1 Negative Effects

Negative impacts include any activity that adversely affects the survival, quality, natural, and beneficial values of the floodplain. Negative effects would result from any action that eliminates or interferes with the floodplain at Parcel ED-1 or reduces its ability to perform normal biological, chemical, hydrological, and physical functions. No significant negative impacts to the floodplain at Parcel ED-1 are expected to occur since the majority of the 100-year floodplain of EFPC is located and protected within the Natural Area. Improvement of the existing road and bridges across Bear Creek associated with Development Area 4 and future construction (i.e., parking lot) within Development Area 2 (see Fig. 2) could encroach into the 100-year floodplain but the potential activities should not negatively impact the floodway or affect flooding conditions. The appropriate engineering studies would be completed and permits would be obtained prior to any of these actions. No critical actions, as defined in 10 *CFR* 1022 would occur as a result of the proposed action or no action.

3.1.2 Direct Effects

Direct effects would result from any activity that occurs directly in a floodplain and affects floodplain characteristics or functions. Direct effects could be negative or adverse if they eliminate, interfere with, or reduce normal floodplain functions. The most extreme example of direct adverse effects to floodplains would involve the placement of fill material into the floodplain during site preparation or construction activities. Placement of fill into the 100-year floodplain for construction within Development Area 2 and potential road and bridge improvements associated with Development Area 4 would have direct effects. However, the amount of fill material should not adversely impact the floodway or affect flooding conditions.

3.1.3 Long-Term Effects

Long-term effects include any activities that influence floodplain functions for several years or decades. Adverse long-term effects would include any activities (e.g., construction of large permanent structures in the floodplain) that impair or damage floodplain functions such that it would take several years or decades for functions to recover to their pre-disturbance level. Adverse long-term effects are of sufficient magnitude and intensity that site resources may not recover without intervention (restoration). Long-term positive effects would include activities that provided permanent protection for the floodplain. No long-term adverse impacts to the 100-year floodplain are expected to result from the proposed action or no action. Minor encroachments that might occur in the 100-year floodplain (see Sect. 3.1.2) would not add enough fill material to the floodplain to create dangerous flooding conditions beyond those that already naturally occur. Long-term positive effects would occur since the majority of the 100-year floodplain would continue to be protected within the Natural Area.

3.1.4 Short-Term Effects

Short-term effects include any activities that have relatively minor impacts on floodplain functions. An example of a short-term negative effect would be the placement of temporary diversion structures (e.g., coffer dam) into the creek or floodplain in order to conduct construction activities. After removal of the temporary structures, the floodplain functions should recover within a short period of time. Short-term disturbances are generally not severe enough to cause permanent impairment of floodplain functions and values. Resources can usually recover in a short period of time without assistance. The duration of the recovery period would depend on the magnitude of disturbance.

4. ALTERNATIVES

4.1 THE NO ACTION ALTERNATIVE

Under the No Action alternative, no portion of Parcel ED-1 would be transferred to Horizon Center LLC and the parcel would remain DOE property. The current lease of the parcel would continue and it is expected that CROET would continue to develop and market the parcel as an industrial/business park. No additional impacts to the 100-year floodplain at Parcel ED-1 would occur beyond those discussed in Sect. 3 and it is expected that the floodplain associated with the Parcel ED-1 would continue to exist and function as it presently does.

4.2 MITIGATION

Any actions that take place in the floodplain at Parcel ED-1 are subject to regulation by USACE, the Tennessee Department of Environment and Conservation (TDEC), Division of Water Pollution Control, and possibly the Tennessee Valley Authority (TVA). USACE regulates activities in floodplains through Sect. 404 of the Clean Water Act of 1972 (CWA). The State of Tennessee also regulates activities in floodplains under Sect. 401 of the CWA and the Tennessee Water Quality Control Act of 1977 (Tennessee Administrative Code 69-3-108). TVA regulates all construction, operation, or maintenance of structures affecting navigation, flood control, or public lands or reservations in the Tennessee River or its tributaries under Section 26a of the TVA Act (U.S. Congress, 1933, as amended).

In general, TDEC has lower thresholds for disturbance to floodplains than USACE. In some cases, USACE may determine that it does not have jurisdiction over activities that would affect floodplains. In these situations, TDEC would serve as the lead regulatory agency. The sequencing for regulatory review by USACE and TDEC and/or TVA requires applicants to make all efforts to avoid adverse impacts to floodplains if possible, minimize adverse impacts, and compensate for adverse impacts after making all practicable effort to avoid and minimize them. Compensatory requirements depend on the quality of the affected floodplain, the type and degree of impact, and the region of the state where the impact would occur. Compensatory mitigation usually includes restoration, enhancement, or preservation and generally must be negotiated with USACE, TVA, and TDEC on a case-by-case basis.

4.2.1 Avoidance

Avoidance means that DOE would take steps to prevent new owners from engaging in any activity that would have adverse impacts on the 100-year floodplain at Parcel ED-1. DOE will accomplish this by withholding the majority of the floodplain from transfer, prohibiting development in the floodplain except for unavoidable encroachments (e.g., utility crossings, road improvements), and placing restrictions on the future uses of the transferred property. In order for these controls to be effective, the floodplain boundaries will be surveyed and marked in the field prior to the title transfer; appropriate restrictions will be placed in deeds, maps, and plats; appropriate buffer zones will be defined and required to be maintained; and the new property owners will be prohibited from construction activities that have adverse direct or indirect effects on the floodplain unless the appropriate regulatory permits are obtained. To ensure that all administrative controls are implemented and functioning as intended, DOE or Horizon Center LLC or their agents or representatives will conduct periodic inspections or monitoring.

Under the proposed action, all environmental protections in the current lease would be carried forward in transfer documents. This includes protection of the Natural Area from the effects of development on the remainder of Parcel ED-1. With DOE's retention of the Natural Area, direct impacts to the 100-year floodplain would be avoided except for the few small areas of potential encroachment into the 100-year floodplain (see Sect. 3.1.2). Because DOE will retain the Natural Area, the provisions of the MAP would continue. Inspections will be scheduled three times each year: December-January, April-June, and September-October. During construction activities in the developable areas Horizon Center LLC would conduct more frequent inspections of areas being disturbed to ensure that no encroachment of the Natural Area boundary is occurring and that no significant adverse impacts to the sensitive resources occur. These inspections would be in addition to any other inspections that may take place by city or state officials (i.e., codes or other regulatory enforcement).

4.2.2 Minimization

Minimization means restricting actions that have the potential to adversely affect the floodplain to the absolute minimum required for the project to continue. Minimization could include reducing areas of impact in the floodplain. It could also include implementing best management practices, such as sediment controls that reduce or prevent soil erosion and runoff from adjacent construction sites, and minimum grading requirements that reduce land disturbance on steep slopes adjacent to the floodplain and streams.

4.2.3 Regulatory Permits

Any proposed activities on Parcel ED-1 that would affect 100-year floodplain would be subject to compliance with all applicable local, state, and federal regulations. Any proposed structure in the floodplain of EFPC (e.g., bridges, culverts, and parking lots) would be subject to a TVA Section 26(a) review. Activities that include discharge of dredged or fill material into the waters of the United States, regardless of whether on private or public property, must obtain a Sect. 404 permit from the USACE and

a Sect. 401 Water Quality Certification from the state prior to taking the action. In cases where TVA lands or waters may be affected, TVA and USACE would determine which agency would be the lead regulatory agency. Federal, state, and local storm water regulations to minimize erosion and sedimentation would also need to be met.

It would be the responsibility of Horizon Center LLC its successors, transferees, or assigns to secure all applicable permits prior to initiating work in the floodplain. Permit conditions would stipulate which activities could occur in or around the floodplain. Regulatory permits would also specify all required mitigative measures, including compensation.

5. SUMMARY AND CONCLUSIONS

The potentially affected 100-year floodplain property lies along EFPC and its tributaries within Parcel ED-1. Under the current lease CROET obtained approvals to encroach upon the 100-year floodplain of EFPC during construction of culverts, bridges, and roads as part of its development of the parcel. These activities were conducted under the appropriate state and federal permits. Upon the title transfer of Parcel ED-1, additional minor encroachments of the floodplain may be necessary for further development of the parcel.

DOE proposes to transfer title to approximately 426 developable acres of Parcel ED-1 to Horizon Center LLC a subsidiary of CROET. CROET has leased Parcel ED-1 since 1998 for development of an industrial/business park. Under the proposed transfer of title, Horizon Center, LLC would continue development of the parcel as an industrial/business park for research and development, medical technology, manufacturing, distribution, and corporate headquarters office facilities. The developable portion of the parcel consists of seven major development areas, ranging in size from 11 to 148 acres. The remaining property, which contains the 100-year floodplain of EFPC is protected as a Natural Area and will not be transferred. The conditions of the transfer documents would ensure continued protection of the Natural Area.

The proposed action is the title transfer of Parcel ED-1 exclusive of the Natural Area that contains most of the floodplain. The Natural Area will stay under DOE ownership and control. For purposes of comparison it was determined that if DOE chose not to transfer Parcel ED-1 (i.e., no action) the current lease with CROET would continue.

Although no adverse direct or indirect impacts are expected except for potential minor encroachments into the 100-year floodplain, all future development activities on Parcel ED-1 that could affect the 100-year floodplain would be subject to regulation by USACE, TDEC, and possibly TVA. Proposed projects would be required to follow normal sequencing during regulatory review to avoid and minimize adverse impacts. Compensatory mitigation should be used as a last resort and would be subject to negotiation between USACE, TDEC, and possibly DOE and TVA.

6. REFERENCES

Adamus, P. R., L. T. Stockwell, E. J. Clarain, Jr., M. E. Morrow, L. P. Rozas, and R. D. Smith 1991. *Wetland Evaluation Technique (WET), Volume I: Literature Review and Evaluation Rationale 1991*, Wetlands Research Program Technical Report WRP-DE-2, U.S. Army Corps of Engineers, Waterways Experiment Station, Vicksburg, MS. 287 pp. plus appendices.

- Brinson, Mark M. 1993 *A Hydrogeomorphic Classification of Wetlands*, Wetlands Research Program Technical Report WRP-DE-4, U.S. Army Corps of Engineers, Waterways Experiment Station, Vicksburg, MS. 79 pp. plus appendices.
- COE (U.S. Army Corps of Engineers) 1992a. *An Identification of the East Fork Poplar Creek Floodplain in Anderson and Roane Counties, Tennessee*. Final Report to the U.S. Department of Energy, December.
- COE 1992b. *An Inventory of Wetlands in the East Fork Poplar Creek Floodplain in Anderson and Roane Counties, Tennessee*. Final Report to the U.S. Department of Energy, December.
- DOE (U.S. Department of Energy) 1994. *East Fork Poplar Creek – Sewer Line Beltway Remedial Investigation Report*, DOE/OR/02-1119&D2&V1, Oak Ridge, Tennessee, January.
- DOE 1996. *Environmental Assessment – Lease of Parcel ED-1 of the Oak Ridge Reservation by the East Tennessee Economic Council*, DOE/EA-1113, Oak Ridge, Tennessee, April.
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- Environmental Laboratory 1987. *Corps of Engineers Wetlands Delineation Manual*, Technical Report Y-87-1, Department of the Army.
- FEMA (Federal Emergency Management Agency) 1984. *Flood Insurance Study for the City of Oak Ridge, Tennessee, Anderson and Roane Counties*. Community Panel No. 475441. National Flood Insurance Program, November.
- FEMA 1985. *Flood Insurance Rate Maps, City of Oak Ridge, Tennessee, Anderson and Roane Counties*. Community Panel Numbers 475441 0010 D, 475441 0015, 475441 0015 D, and 475441 0030 D, May.
- TVA (Tennessee Valley Authority) 1991. *Flood Analysis for Department of Energy Y-12, ORNL, and K-25 Plants*, December.
- U.S. Congress 1933, as amended.

APPENDIX D

COPIES OF CONSULTATION LETTERS



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

August 21, 2001

Certified Mail
Return Receipt Requested

4WD-FFB

Susan M. Cange
Reindustrialization Liaison
Office of Assistant Manager for Environmental Management
U.S. Department of Energy
Oak Ridge Operations
P.O. Box 2001
Oak Ridge, Tennessee 37831

SUBJECT: Section 120 (h) (4) (B) determination for Parcel ED-1 at the East Tennessee
Technology Park (ETTP)

Dear Ms. Cange:

Per your request, EPA has review the documentation related to the Comprehensive Environmental Response, Compensation, and Liability (CERCLA) Section 120 (h) (4) (B) clean parcel determination for Parcel ED-1 and EPA's associated concurrence. Based on the review, EPA believes the proper documentation was submitted by the Department of Energy (DOE) to support a "clean parcel" determination for parcel ED-1 excluding East Fork Poplar Creek and Bear Creek and their associated floodplains. Based on our August 2, 1995 letter (Mr. Weeks to Mr. Lingle), DOE has EPA's CERCLA Section 120 (h) (4) (B) concurrence for Parcel ED-1 excluding East Fork Poplar Creek and Bear Creek and their associated floodplains.

If you have questions concerning this matter, contact me at 404-562-8513.

Sincerely



John Blevins
Oak Ridge Project Manager

cc: Pat Halsey, DOE-ORR
Oak Ridge SSAB
Oak Ridge LOC
Doug McCoy, TDEC
Thomas Gebhart, TDEC
Tim Fredrick, GF
Myrna Redfield, DOE-ORR
Connie Jones, EPA
Donna Perez, DOE-ORR
Jim Kopotic, DOE-ORR



TENNESSEE HISTORICAL COMMISSION
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
2941 LEBANON ROAD
NASHVILLE, TN 37243-0442
(615) 532-1550

May 24, 2002

Mr. David Allen
Department of Energy
Oak Ridge Operations Office
Post Office Box 2001
Oak Ridge, Tennessee 37831

RE: DOE, DRAFT ENVIRONMENTAL ASSESSMENT ADDENDUM, TRANSFER OF PARCEL
ED-1 TO CROET, OAK RIDGE, ROANE COUNTY, TN

Dear Mr. Allen:

At your request, our office has reviewed the above-referenced draft environmental assessment addendum in accordance with regulations codified at 36 CFR 800 (Federal Register, December 12, 2000, 77698-77739). Based on the information provided, and in accordance with our previous review of the archaeological survey of the area of potential effect, we find that the project area, as currently defined, contains no archaeological resources eligible for listing in the National Register of Historic Places.

This office has no objection to the implementation of this project. However, prior to transfer, and in accordance with our correspondence of April 29, 2002; please submit the proposed final deed restrictions to this office for our review and comment. If project plans are changed, please contact this office to determine what further action, if any, will be necessary to comply with Section 106 of the National Historic Preservation Act.

Your cooperation is appreciated.

Sincerely,

Herbert L. Harper
Executive Director and
Deputy State Historic
Preservation Officer

HLH/jmb

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AMESQ

Log No. 63093

Date Received JUN 3 2002

File Code _____



TENNESSEE HISTORICAL COMMISSION
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
2941 LEBANON ROAD
NASHVILLE, TN 37243-0442
(615) 532-1550

September 5, 2002

Mr. Gary S. Hartman
Oak Ridge Operations/DP-80
Post Office Box 2001
Oak Ridge, Tennessee, 37831

RE: DOE, TRANSFER/PARCEL ED-1, OAK RIDGE, ANDERSON COUNTY

Dear Mr. Hartman:


In response to your request, received on Monday, August 26, 2002, we have reviewed the documents you submitted regarding your proposed undertaking. Our review of and comment on your proposed undertaking are among the requirements of Section 106 of the National Historic Preservation Act. This Act requires federal agencies or applicant for federal assistance to consult with the appropriate State Historic Preservation Office before they carry out their proposed undertakings. The Advisory Council on Historic Preservation has codified procedures for carrying out Section 106 review in 36 CFR 800. You may wish to familiarize yourself with these procedures (Federal Register, December 12, 2000, pages 77698-77739) if you are unsure about the Section 106 process. You may also find additional information concerning the Section 106 process and the Tennessee SHPO's documentation requirements at www.state.tn.us/environment/hist/sect106.htm.

Based on available information, we concur that the project as currently proposed will NOT ADVERSELY AFFECT ANY NATIONAL REGISTER OF HISTORIC PLACES-LISTED PROPERTY SO LONG AS THE FOLLOWING CONDITION(S) ARE MET:

The covenant language contained as an attachment to your letter dated August 22, 2002 is made a part of the transfer document and run continuously with the land in perpetuity.

Unless project plans change, and so long as the condition is met, this office has no objection to the implementation of this project. Should project plans change, please contact this office to determine what additional action, if any, is necessary. Questions and comments may be directed to Joe Garrison (615) 532-1559. Your cooperation is appreciated.

Sincerely,


Herbert L. Harper
Executive Director and
Deputy State Historic
Preservation Officer

HLH/jyg

OFFICIAL FILE COPY
AMESQ

Log No. 76827
Date Received SEP 13 2002
File Code _____



Department of Energy

Oak Ridge Operations Office
P.O. Box 2001
Oak Ridge, Tennessee 37831—
August 2, 2002

Dr. Lee A. Barclay, Ph.D.
Field Supervisor
U. S. Fish and Wildlife Service
446 Neal Street
Cookeville, Tennessee 38501

Dear Dr. Barclay;

**INFORMAL CONSULTATION UNDER SECTION 7 OF THE ENDANGERED
SPECIES ACT FOR THE PROPOSED TRANSFER OF A PORTION OF PARCEL ED-1
OF THE OAK RIDGE RESERVATION TO THE COMMUNITY REUSE
ORGANIZATION OF EAST TENNESSEE**

As promised in our initial letter (dated April 22, 2002) and at our meeting on June 24, 2002, concerning the subject action, please find enclosed a copy of the Quit Claim Deed conditions that apply to listed species. Especially note condition (10) that is included to protect any Indiana bats that might inhabit the parcel.

In response to your letter of June 6, 2002 and our subsequent meeting, the Department of Energy (DOE) has decided to modify the proposed action to the transfer of the developable portion of the parcel only. Therefore, the Natural Area segment of the parcel is proposed to remain as it is, as a lease to Community Reuse Organization of East Tennessee (CROET) from DOE. This will allow greater control of the Natural Area by DOE and should answer your major concerns about the transfer's potential effect on listed species that could be present on the parcel. The draft Environmental Assessment Addendum and Mitigation Action Plan will be revised to reflect responses to these and other comments as part of the National Environmental Policy Act (NEPA) process.

This proposed action has great community interest and anything you could do to expedite your review and concurrence would be appreciated. If you need further information, please call me at (865) 576-0938.

Sincerely,

A handwritten signature in dark ink, appearing to read "James L. Elmore", is written over a horizontal line.

James L. Elmore, Ph.D.
Alternate NEPA Compliance Officer

Enclosure

cc w/enclosure:
David Allen, SE-30-1
Nancy Carnes, CC-10
Susan Cange, AU-61
Katy Kates, AD-42

**Draft Quitclaim Deed Conditions to be Provided to the
Fish and Wildlife Service and State Historic Preservation Office**

(4). Covenanting to the GRANTOR, its successors and assigns, the promissory right and license on the part of the GRANTEE, to permit the GRANTOR reasonable access as shown on Exhibit "A" on, over and through the property for the purposes of assuring and/or accomplishing appropriate mitigation and monitoring actions on abutting GRANTOR property.

(5). Reserving to the GRANTOR, its successors and assigns, the continuing rights to access, use, sample, and maintain GRANTOR's existing monitoring well system located on the premises. The monitoring wells and access routes to reach the wells for sampling are shown on Exhibit "A".

(6). The GRANTOR reserves an easement to itself for the right of access along the existing ingress/egress roads shown on Exhibit "A".

(7). All activities and development of the land by the GRANTEE, its successors and assigns shall 1) be consistent with those land uses analyzed in the Environmental Assessment dated April 1996 and set forth in the Addendum to the Environmental Assessment; and 2) be consistent with the GRANTEE's proposal to the GRANTOR which was approved by the GRANTOR on _____. Said land uses are set forth in Exhibit "B" to this Quitclaim Deed.

(8). Activities on the premises herein conveyed which cause a significant adverse impact to the Natural Area on GRANTOR's abutting land shall be mitigated by the GRANTEE.

(9). Any and all construction which may occur within any floodplain or floodway or which might affect a floodplain must comply with applicable Federal and State laws with respect to said construction and must be consistent with the Federal Facilities Agreement requirements.

(10). The land herein conveyed shall be used in a manner consistent with the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 et seq.). Specifically, the habitat for the endangered Indiana bat should be protected by retaining trees with exfoliating bark whenever possible. Should circumstances require cutting of those trees, they should not be cut between April 15 through September 15 unless the required processes of consultation with the Fish and Wildlife Service are followed.

(11). GRANTEE shall protect any historical and/or archaeological cultural resources which may be discovered on the premises subsequent to the date of this conveyance and shall comply with the procedures set forth in attached Exhibit "C".

(12). The GRANTEE, its successors and assigns, shall fence and protect any existing cemeteries that may be located on the property herein conveyed and said cemeteries shall remain in their same location as a separate land unit. GRANTEE shall not impede reasonable public ingress and egress to any such cemeteries.

(13). The GRANTEE, its successors and assigns, shall comply with all applicable Federal, State, and local laws and regulations with respect to any present or future development of the property herein conveyed, including, but not limited to, those laws and regulations which govern sewage disposal, facilities, water supply, and other public health requirements. All structures, facilities, and improvements requiring a water supply shall be required to be connected to an appropriate regulatory approved water system for any and all

usage. GRANTEE covenants not to extract, consume, expose, or use in any way the groundwater underlying the property or water from any streams located on the property without the prior written approval of the GRANTOR, the United States Environmental Protection Agency (EPA), and the Tennessee Department of Environment and Conservation

(14). GRANTOR holds harmless and indemnifies GRANTEE as set forth in, and subject to the limitations, terms and conditions of Exhibit "D" to this Quitclaim Deed.

(15). The GRANTOR acknowledges that the Oak Ridge Reservation has been identified as a National Priority List Site under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). The GRANTEE acknowledges that the GRANTOR has provided it with a copy of the Oak Ridge Reservation Federal Facility Agreement (FFA) and relevant amendments entered into by the United States Environmental Protection Agency Region 4, the Tennessee Department of Environment and Conservation, and the GRANTOR effective on January 1, 1992. The GRANTEE agrees that should any conflict arise between the terms of such agreement as it presently exists or may be amended and terms of this deed, the terms of the FFA will take precedence. If the property, or any portion thereof, within this conveyance is removed from the National Priority List under CERCLA, and the Environmental Protection Agency and the Tennessee Department of Environment and Conservation agree in writing that the property, or any portion thereof, within this conveyance may be released from the terms of this condition, then this condition shall no longer apply. The GRANTOR has accomplished appropriate reviews under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. Pursuant to CERCLA 120(h)(4)(D), the GRANTOR warrants that any response action or corrective action found to be necessary after the date of this conveyance shall be conducted by the GRANTOR. The GRANTEE, its successors and assigns, hereby grants to the GRANTOR a right

of access to the property in any case which a response action is found to be necessary or such access is necessary to carryout a response action or corrective action on adjoining property.

(17). The parties hereto intend that, other than the indemnification addressed in Condition No. 14 as further set forth in Exhibit "D" to this Quitclaim Deed, the reservations, restrictions and covenants herein, shall run with the entire parcel of land conveyed and be binding upon the GRANTEE, its successors and assigns, or any other person acquiring an interest in the property.



Department of Energy

Oak Ridge Operations Office
P.O. Box 2001
Oak Ridge, Tennessee 37831—

August 23, 2002

Dr. Lee A. Barclay, Ph.D.
Field Supervisor
Fish and Wildlife Service
446 Neal Street
Cookeville, Tennessee 38501

Dear Dr. Barclay:

INFORMAL CONSULTATION UNDER SECTION 7 OF THE ENDANGERED SPECIES ACT FOR THE PROPOSED TRANSFER OF PARCEL ED-1 OF THE OAK RIDGE RESERVATION TO THE COMMUNITY REUSE ORGANIZATION OF EAST TENNESSEE

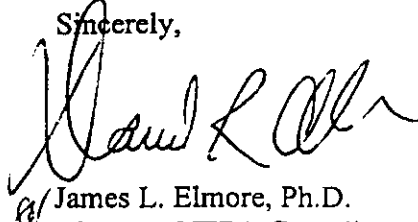
This letter is a follow-up to our phone conversation on Friday, August 16, 2002, regarding informal consultation under Section 7 of the Endangered Species Act for the proposed transfer of a portion of Parcel ED-1. The Department of Energy (DOE) has decided to transfer only the developable portions of Parcel ED-1 to Horizon Center LLC, a subsidiary of the Community Reuse Organization of East Tennessee (CROET). Ownership of the Natural Area will remain with DOE and will be leased to Horizon Center, LLC. The decision to transfer the developable portion of Parcel ED-1 was based on public and agency comments, including the comments submitted by the Fish and Wildlife Service dated June 6, 2002. The fact that DOE is retaining ownership of the Natural Area should alleviate the concerns expressed regarding its protection.

The requirement that Horizon Center, LLC monitors the Natural Area and perform mitigation, if necessary will be in the lease agreement. Although implementation of the Mitigation Action Plan will be the responsibility of Horizon Center, LLC, oversight will be provided by DOE. In addition, requirements to ensure that development activities do not adversely impact the Natural Area are included in Condition 8. If Horizon Center, LLC or any of its successors, transfers, or assigns fail to abide by the quit claim provisions of the deed then DOE and CROET may resolve the dispute subject to the dispute clause in the deed. Ultimately DOE has the right of judicial enforcement of the quit claim deed.

In response to your comment on Condition 10 in the Quitclaim deed, the text has been modified to indicate that "habitat for the endangered Indiana bat should be protected by retaining live or dead trees with exfoliating bark whenever possible." The protection of the natural area as required by Condition 8 will ensure that potential gray bat foraging habitat in the floodplain is not significantly impacted.

In consideration of all the safeguards in place to protect the natural area and any federally-listed species that might inhabit the area, DOE has determined that the proposed transfer of a portion of parcel ED-1 is not likely to adversely affect listed species. Please indicate your concurrence, if appropriate, on DOE's determination. If you have any further questions, please call me at (865)576-0938. Thank you in advance for your prompt reply.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Elmore", with a stylized flourish at the end.

James L. Elmore, Ph.D.
Alternate NEPA Compliance Officer

cc:

David Allen, SE-30-1
Susan Cange, AU-61
Nancy Carnes, CC-10
Katy Kates, AD-42



United States Department of the Interior

FISH AND WILDLIFE SERVICE

446 Neal Street
Cookeville, TN 38501

September 18, 2002

Mr. James L. Elmore, Ph.D.
U.S. Department of Energy
Oak Ridge Operations Office
P.O. Box 2001
Oak Ridge, Tennessee 37831

Dear Dr. Elmore:

Thank you for your letter and enclosure of August 2, 2002, transmitting a copy of the Quit Claim deed restrictions for the proposed transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee (CROET). A conference call regarding this proposal was held between representatives of the Department of Energy (DOE) and U.S. Fish and Wildlife Service on August 16, 2002. A subsequent correspondence on this subject was received on August 23, 2002. This letter reflects the decision of DOE to only transfer the developable portions of Parcel ED-1 to CROET. All of this information is supplemental to the original Biological Assessment (BA) prepared for this proposal in 1995, and the subsequent request for informal consultation, pursuant to Section 7 of the Endangered Species Act, on April 23, 2002. U.S. Fish and Wildlife Service (Service) personnel have reviewed the information submitted and offer the following comments for consideration.

The BA and supporting information are adequate and support the conclusion of not likely to adversely affect, with which we concur. In view of this, we believe that the requirements of Section 7 of the Endangered Species Act (Act) have been fulfilled and that no further consultation is needed at this time. However, obligations under Section 7 of the Act must be reconsidered if: (1) new information reveals that the proposed action may affect listed species in a manner or to an extent not previously considered, (2) the proposed action is subsequently modified to include activities which were not considered in this biological assessment, or (3) new species are listed or critical habitat designated that might be affected by the proposed action.

Our previous comments of June 6, 2002, regarding the Environmental Assessment (EA) Addendum, Mitigation Action Plan, the efficacy of previous CROET monitoring activities and DOE oversight on this parcel, and migratory bird issues remain valid. We would appreciate further consideration of the issues presented therein.

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Log No. 77767

Date Rec'd SEP 24 2002

File Code

These constitute the comments of the U.S. Department of the Interior in accordance with provisions of the Endangered Species Act (87 Stat. 884, as amended: 16 U.S.C. 1531 et seq.), the Migratory Bird Treaty Act (16 U.S.C. 703-711), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), and the National Environmental Policy Act (42 U.S.C. 4321-4347; 83 Stat. 852). We appreciate the opportunity to comment. Should you have any questions or need further assistance, please contact Steve Alexander of my staff at 931/528-6481, ext. 210, or via e-mail at steven_alexander@fws.gov.

Sincerely,

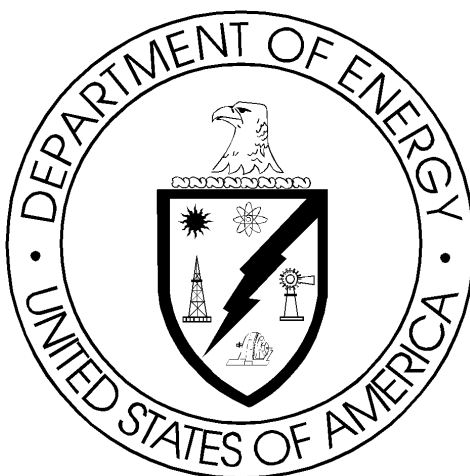

for Lee A. Barclay, Ph.D.
Field Supervisor

xc: John Owsley, TDEC, Oak Ridge
Dave McKinney, TWRA, Nashville

APPENDIX E

RESPONSES TO PUBLIC AND AGENCY COMMENTS

**Responses to Public and Agency Comments on
the Draft Environmental Assessment Addendum
and Mitigation Action Plan
for the Proposed Title Transfer of Parcel ED-1
(DOE/EA-1113-A)**



April 2003

**U.S. Department of Energy
Oak Ridge Operations
Oak Ridge, Tennessee**

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ATTACHMENT A – COMMENTS ON THE DRAFT ENVIRONMENTAL ASSESSMENT ADDENDUM AND MITIGATION ACTION PLAN FOR THE PROPOSED TITLE TRANSFER OF PARCEL ED-1	A-1
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1. INTRODUCTION

On May 17, 2002, the U.S. Department of Energy (DOE) issued a draft Environmental Assessment (EA) Addendum and revised Mitigation Action Plan (MAP), which were prepared to meet the requirements of the National Environmental Policy Act (NEPA). This action was in response to a proposal submitted to DOE by the Community Reuse Organization of East Tennessee (CROET) in February 2002, requesting the title transfer of Parcel ED-1 (also known as the Horizon Center). Under the proposed action, CROET would continue to develop Parcel ED-1 as an industrial/business park. CROET has leased the parcel from DOE since 1996; the lease became effective in 1998.

The draft EA Addendum and revised MAP were released for comment on May 17, 2002. Originally the comment period was scheduled to end on May 31, 2002. However, DOE, at the request of one organization, granted a 15-day extension of the comment period to June 14, 2002. On May 28, 2002, DOE held a public information session.

Based on the comments received, DOE decided to proceed only with the transfer of the developable portions of Parcel ED-1 to CROET. The remaining portion of the parcel that contains the Natural Area will be retained by DOE and will remain under a lease between DOE and CROET. CROET will continue to be responsible for the monitoring and mitigation requirements described in DOE's MAP.

DOE received a supplement to CROET's proposal on August 19, 2002, requesting that the developable portion of Parcel ED-1 be transferred to the Horizon Center LLC, and likewise that the lease for the Natural Area be with Horizon Center LLC. Over the past 2 years, CROET has undertaken a reorganization resulting in a tiered, multi-company organizational structure. The 41-member CROET Board of Directors and the CROET President and Chief Executive Officer preside over the CROET Holding Company that serves as a parent or quasi-holding company for the "subsidiary" companies. Each of the subsidiary companies generally corresponds to one of the major operations or activities historically within CROET's charge. As an example, Heritage Center LLC is responsible for reindustrialization activities at the East Tennessee Technology Park (ETTP). In a like manner, Horizon Center LLC manages industrialization operations at the Horizon Center.

CROET has appointed a separate Board of Directors to oversee the operations of these companies, respectively. The reorganization provides advantages for the early and full identification of opportunities and for full capitalization on both known and emerging opportunities. In this regard, the key advantage to the restructuring lies in its ability to increase the overall efficiency of CROET operations.

There is a continuing relationship between the holding company and subsidiary companies in that CROET has a number of board positions on the subsidiary board of directors. Additionally, the subsidiaries may loan funds to each other to cover any temporary shortfall experienced by one of the others. It should be noted, however, that these subsidiary companies are structurally and legally separate.

To avoid confusion and for purposes of this document, the summary of comments presented in each subsection refer to CROET while the responses, where appropriate, refer to the Horizon Center LLC.

2. PUBLIC AND AGENCY COMMENTS

Comments were provided by the state of Tennessee, two State of Tennessee departments and two divisions, one state agency, three local environmental advisory boards, CROET, one economic council, three environmental organizations, and 12 individuals. The agencies, organizations, and individuals who offered comments on the draft EA Addendum and MAP included:

- Advocates for the Oak Ridge Reservation (AFORR),
- CROET,
- East Tennessee Economic Council (ETEC),
- Environmental Quality Advisory Board (EQAB),
- Oak Ridge Reservation (ORR) Local Oversight Committee (LOC),
- ORR Local Oversight Committee – Citizens’ Advisory Panel (CAP),
- State of Tennessee (TN)
- Tennessee Citizens for Wilderness Planning (TCWP),
- Tennessee Conservation League (TCL),
- Tennessee Department of Economic and Community Development (TN-DECD),
- Tennessee Department of Environment and Conservation - DOE Oversight Division (TDEC-DOE),
- TDEC Division of Natural Heritage (TDEC-DNH),
- Tennessee Wildlife Resources Agency (TWRA),
- U.S. Fish and Wildlife Service (FWS),
- David L. Coffey (Coffey),
- Douglas B. Janney, Jr. (Janney),
- Josh Johnson (Johnson),
- Joseph A. Lenhard (Lenhard),
- Robert Peelle (Peelle),
- L.O. Rabinowitz (Rabinowitz),
- William Schramm (Schramm),
- Lorene Sigal (Sigal),
- Ellen Smith (Smith),
- Edward Sonder (Sonder),
- Thomas L. Southard (Southard), and
- Warren Webb (Webb).

Original comments are provided as an attachment to this summary. Because many comments expressed similar concerns or raised similar issues, they were grouped into subject areas for the response summary. In all, there are 17 subject areas; they are presented in order based on the number of commentors for each area:

1. Transfer of the Natural Area;
2. MAP Requirements;
3. Transfer of Parcel ED-1 to CROET;
4. Effectiveness of Deed Restrictions;
5. Threatened and Endangered (T&E) Species;
6. Transfer of Development Area 4;
7. Oversight of CROET’s Activities;
8. Socioeconomics;
9. Utilities;
10. Cumulative Impacts;

11. Invasive/Exotic Species;
12. NEPA Process;
13. Land Use Planning;
14. Transfer of Parcel ED-1 to an Entity other than CROET;
15. Requirements Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA);
16. Editorial Comments; and
17. Cultural Resources.

Comments not specifically related to the EA Addendum, but rather directed at DOE policy or programs other than reindustrialization or other local and regional issues, are not included in this summary as they are beyond the scope of the EA. In addition, attachments supporting comment letters were used, where applicable, in the preparation of the final EA Addendum, but specific responses may not appear in this summary.

3. SUMMARY OF COMMENTS AND RESPONSES

The following sections of this report summarize the nature of comments received by DOE according to subject area. A summary of comments is provided and is followed by a list of the commentors and DOE's response. In some cases, a reference to revisions incorporated in the final EA Addendum or MAP is included. The reader may refer to Attachment A of this report to review the complete set of comments received.

3.1 TRANSFER OF THE NATURAL AREA

3.1.1 Summary of Comments

Several commentors expressed concerns regarding the transfer of the portion of Parcel ED-1, known as the Natural Area, to CROET and strongly recommended that DOE either retain ownership; establish a conservation easement to be held by another agency or organization (e.g., TWRA or the Nature Conservancy); or transfer the land to another conservation agency or organization. It was also suggested that the Natural Area could be transferred to the City of Oak Ridge, which could then accord it "greenbelt," or a less restrictive greenbelt status.

CROET offered a different perspective maintaining that they are capable of, and should maintain, protection of the Natural Area. They pointed out that having any other entity control the Natural Area would likely affect their ability to effectively market the developable lots and control events in the Natural Area.

Three commentors stated that they either did not have any objection to, or preferred, the transfer of only the developable portion of Parcel ED-1 to CROET. Reasons ranged from the ownership of the developable portion of the parcel would improve CROET's ability to market and develop the property; the ecological significance of the Natural Area and concerns about CROET providing for the area's long-term stewardship and ecological monitoring; and that the transfer of the developable portion of the parcel to CROET is acceptable, but not the most desirable option.

Some commentors were concerned that CROET's stated mission, to promote economic development for the region, is inconsistent with requirements for ecological monitoring and the protection of the Natural Area. They also felt that, to date, CROET has not fulfilled its ecological monitoring responsibilities on Parcel ED-1 and that there is no reason to believe that CROET will undertake the necessary degree of ecological monitoring of the Natural Area once it owns the entire parcel. Commentors also were concerned that if CROET should be disbanded that the responsibility for protection and monitoring of the Natural Area would be in limbo. Another commentor stated that once all developable sites are sold to private industries, CROET would then only own the infrastructure, roadways, and the Natural Area. With no further income from land sales, there would be no source of funds to continue the specified activities.

Commentors: AFORR, CROET, EQAB, LOC, CAP, TN, TCWP, TCL, TDEC-DNH, TWRA, FWS, Johnson, Peelle, Sonder, and Webb.

3.1.2 Response

Based on the comments received, DOE has revised the proposed action to include the transfer of only the developable portions of Parcel ED-1 to Horizon Center LLC. At this time, DOE will maintain ownership and control over the Natural Area and Horizon Center LLC will lease the area. Under the lease

agreement, Horizon Center LLC will continue to be responsible for meeting the requirements of the MAP. The ultimate disposal (if any) of the Natural Area will be determined at a later date.

3.2 MITIGATION ACTION PLAN REQUIREMENTS

3.2.1 Summary of Comments

Several comments were received regarding the requirements of the MAP. Some commentors seemed to believe that the requirements were too onerous, while others thought they were too ambiguous. As an example, one commentor thought that the physical inspections should only be required on an annual basis. In addition, two comments were received stating that the MAP could be interpreted as prohibiting all activity within the Natural Area while another interpreted that except for the sensitive areas, it should be made clear that there are no restrictions on crossings through the Natural Area, particularly for the purpose of developing necessary infrastructure extensions. It was also expressed that CROET, and not their clients, should be responsible for required monitoring. On the other hand, it was suggested that the MAP needs to specify who is responsible for oversight; clearly outline specific requirements for monitoring, review, and follow-up; and make the establishment of an advisory panel mandatory. A concern was expressed that CROET has not met the requirements of the MAP and it was suggested that a mechanism be established to ensure compliance with the MAP requirements. Concerns were also expressed that too much is left to the discretion, interpretation, and “good faith effort” of CROET.

There were a few comments received specific to the terminology “pre- and post-development monitoring.” It was believed that this terminology is misleading because of the current status of development on the parcel. One group suggested changing “post-development” monitoring standards to “pre-development” for those sites not already developed at Parcel ED-1.

Additional comments were received regarding other aspects of the MAP. For example, a commentor suggested that the coverage of the T&E species appears to be incomplete, and that there are omissions of formerly identified cultural resources on the map presented in the document. One commentor requested that the names and qualifications of the various individuals conducting the bird surveys be given. They also wanted to know how the analysis compares to trend analysis as described by the U.S. Geological Survey. It was also suggested that the data regarding corvids and nest parasites be presented and evaluated to determine if they could be affecting bird breeding in the area (e.g., increased nest predation). It was also suggested that the possibility of increased access of other nest predators, such as raccoons and skunks, be evaluated in the MAP.

Commentors: AFORR, CROET, CAP, EQAB, TCWP, TCL, TDEC-DOE, FWS, Lenhard, Rabinowitz, Sigal, and Webb.

3.2.2 Response

DOE convened a peer review of the existing MAP in March 2002. The Peer Review Team was comprised of biologists/ecologists and a NEPA Compliance Officer from DOE Headquarters. They recommended that the ecological data collected to date be reviewed and that revisions to the MAP be based on the results of the review. Many of the requirements, as well as the specificity in the revised MAP, are based on the Peer Review Team’s recommendations.

The required physical inspections, found in Sect. 3.1.1 of the MAP, are necessary to ensure that the Natural Area is not adversely impacted from activities on the developable portions of the property. The original MAP required quarterly inspections. However, after further evaluation the frequency was

changed to three times per year. This is so the inspections can occur: (1) prior to the primary construction period; (2) during the time of flowering, nesting, and spring migrations; and (3) following the prime construction period. The text of the MAP has been reviewed to make sure that it is clear that only Horizon Center LLC, and not their clients, are responsible for the required environmental monitoring.

Use of the Natural Area will be permitted as long as that use is non-intrusive and consistent with the natural environment (e.g., walking paths). If encroachment into the Natural Area is unavoidable, it will be done in accordance with the appropriate permit requirements and regulations, and the conditions specified in the lease between DOE and Horizon Center LLC. Construction of any and all habitable structures within the Natural Area will be prohibited. Encroachment into the sensitive areas where federal or state-listed species are known to occur will be prohibited.

DOE will be responsible for the oversight and accountability of Horizon Center LLC for meeting the requirements of the MAP because the Natural Area will not be transferred and will remain under DOE ownership. Horizon Center LLC, in accordance with the terms of the lease, will be responsible for the continuation of monitoring and inspections of the Natural Area, and will provide the collected data to DOE for use in publishing annual reports. The reports will continue to be made available to the public on an annual basis. At this time, DOE has decided not to create an advisory panel. Because the Natural Area will remain under DOE ownership, DOE will use in-house resources to ensure that Horizon Center LLC is meeting the terms of their lease.

The terms “pre-development” and “post-development,” used in the original MAP, are confusing and therefore, they will not continue to be used. These terms are mentioned in the revised MAP, in Sect. 2.1, where a summary is presented of the 1997 surveys that were conducted prior to any development on Parcel ED-1 (pre-development), and the ecological monitoring that has been completed since the construction of much of the infrastructure (post-development).

The MAP addresses listed T&E species known to be present within the Natural Area and that have the most potential to be adversely impacted. Monitoring of birds (including migratory species), amphibians, benthic macroinvertebrates, and fish will continue under the revised MAP. T&E plant species on Parcel ED-1 will continue to be monitored as part of the required inspections. Sections 3.2 and 4.2 of the EA Addendum have been revised to include additional information about migratory birds, including the Cerulean Warbler.

Although more cultural resources have been identified than what is indicated on the map in the document, the Tennessee Historical Commission has indicated that based on information provided to them about the proposed action, and in accordance with their previous review of the archaeological survey of the area of potential effect, the project area contains no archaeological resources eligible for listing in the National Register of Historic Places. DOE has submitted the proposed deed restrictions for review and comment. Correspondence from the Tennessee Historical Commission is contained in Appendix B of the EA Addendum.

3.3 TRANSFER OF PARCEL ED-1 TO CROET

3.3.1 Summary of Comments

Several commentors stated their support of the proposed transfer of the entire parcel to CROET. It was stated that the transfer should occur as quickly as possible and with as few restrictions as feasible. One group commented that they have always had a concern about the “desirability of leasehold interests to the private industrial market” and that average- to major-size industrial prospects are not interested in long-term leases when fee simple holdings are available. They also stated that CROET’s ownership of

Parcel ED-1 should vastly improve its marketing success. Another commentor recognized DOE's well-founded purpose in releasing property to mitigate downsizing, and through its reindustrialization, program make land available for new business and industry.

Commentors: CROET, ETEC, TN-DECD, Coffey, Janney, Lenhard, Rabinowitz, and Southard.

3.3.2 Response

DOE agrees that fee simple ownership should improve Horizon Center LLC's marketing success to help meet the goal of the proposed action to continue and further support economic development in the region. Based on other comments received, DOE has revised the proposed action to include the transfer of only the developable portions of the parcel to Horizon Center LLC. DOE will maintain ownership and control over the Natural Area and Horizon Center LLC will lease the area and be responsible for its protection.

3.4 EFFECTIVENESS OF DEED RESTRICTIONS

3.4.1 Summary of Comments

Several commentors expressed concerns regarding the effectiveness of deed restrictions that would limit CROET's development activities and protect the Natural Area. They stated that deed restrictions are difficult and costly to enforce; that only DOE would be legally entitled to assert violation of the deed restriction; and that redress typically is restricted to re-purchase of the land and buildings at current market value. One commentor suggested that since they did not believe that deed restrictions are an effective mechanism for permanent protection, DOE should consider establishing another mechanism. Suggestions were made that the landowner be required to post a bond to ensure their future performance, or that a reversion clause be inserted into the deed that would allow return of the land to DOE if CROET should no longer exist or not meet the requirements to protect the Natural Area. A request was made that copies of the draft transfer documents be made available for public review. Some believe that these agreements are part of the NEPA action and thus subject to public comment. Another commentor wanted to know if the deed restrictions would be included/transferred to new owners when CROET land was sold.

Commentors: AFORR, CAP, EQAB, TCWP, Peelle, Sigal, and Webb.

3.4.2 Response

DOE's decision to maintain ownership of the Natural Area should alleviate some of the concerns regarding its protection. Requirements will be placed in the appropriate documents to ensure that Horizon Center LLC monitors the Natural Area and performs mitigation if necessary. In addition, restrictions are included to ensure that development activities do not adversely impact the Natural Area. DOE has considered the effectiveness of various enforcement mechanisms, such as a reversion clause or the requirement for CROET to obtain a bond, and it was determined that each of these mechanisms have various flaws that cause them to either not be practical or effective. If Horizon Center LLC or any of its successors, transferees, or assigns fails to abide by the provisions of the Quitclaim Deed, then DOE will be able to seek enforcement in Federal District Court. The conditions specified in the Quitclaim Deed will flow to new owners.

The transfer documents will be made available to the public for information once DOE Headquarters approves the 10 *Code of Federal Regulations (CFR)* Part 770 package that will sit before the Congressional committees.

3.5 THREATENED AND ENDANGERED SPECIES

3.5.1 Summary of Comments

Several comments were received regarding T&E species, particularly the Cerulean Warbler and the Tennessee dace. Commentors requested that, based on provided information, DOE revise the EA Addendum and MAP to acknowledge the presence of the Cerulean Warbler on Parcel ED-1. It was also suggested that DOE analyze impacts to Cerulean Warblers and alter the EA Addendum accordingly.

Comments received regarding the Tennessee dace were varied and, in some cases, contradictory. For example, it was stated that the apparent impact on the population in Dace Branch from a 1999 storm event is of concern and that constant vigilance, as well as advancements in the prevention of construction projects, is needed. Conversely, it was also stated that the implication that construction activities on the site were the cause of the decline of the species in Dace Branch is speculation at best. They indicated that there has been a continued decline of the dace population over the years, indicating that there may be other causal factors involved. Regardless of the cause of the decline, it was agreed that continued monitoring is needed to further evaluate the condition of the population.

One commentor expressed a concern that the Biological Assessment (BA), prepared in 1995 to support the lease of Parcel ED-1 to CROET, was inadequate and inferred that it should be reviewed.

Commentors: AFORR, TCWP, TCL, TDEC-DOE, FWS, and Smith.

3.5.2 Response

As suggested, DOE has revised Sects. 3.2 and 4.2 in the EA Addendum to provide more information about migratory bird protection and the Cerulean Warbler in particular.

With respect to the Tennessee dace, DOE provided oversight during construction activities and is confident that CROET took the necessary actions to prevent adverse impacts to Dace Branch. Construction activities in the area of Dace Branch are complete and the area has been stabilized. Continued monitoring of Dace Branch was suggested by the MAP Peer Review Team and is included in the MAP. Horizon Center LLC is committed to maintaining “best management practices” in all future construction activities on Parcel ED-1. This often involves going beyond what is required by state and local requirements in order to ensure that adverse impacts are avoided if at all possible. It should be noted that other future activities beyond Horizon Center LLC’s control (e.g., Tennessee Department of Transportation expansion of State Route 95) could adversely impact Dace Branch.

DOE has reviewed the BA that was originally prepared in September 1995. At the time the BA was completed, the gray bat and Indiana bat were both federally listed as Endangered and the Virginia spiraea was listed as Threatened. DOE reviewed the current listings for all of the species previously identified by FWS as having the potential to occur on or within the vicinity of Parcel ED-1, and determined that only the gray bat, Indiana bat, and Virginia spiraea still have official listing status.

DOE has also reviewed the Annual Reports prepared from 1997 to 2000 as part of the implementation of the MAP for the original lease of Parcel ED-1. These reports were reviewed to determine if they contained any additional information pertaining to any federally listed species or their potential habitat that may have been discovered during any of the monitoring or development that has occurred on the parcel. This review did not indicate the presence of any new listed species or habitat that had not already been addressed in the 1995 BA or the EA prepared by DOE in 1996.

Also, not included in the 1995 BA was any discussion or information on a cave that is present on Parcel ED-1 near Herrell Road in the northwest part of the parcel. The opening of the cave is located within a road ditch and is approximately 1.5 ft high by 2 ft wide. Water from the ditch drains into the opening during wet periods of the year. To date, no surveys of the cave have been conducted to determine the size of the cave or if gray or Indiana bats are present or use the cave for roosting. However, DOE is assuming that bats may be utilizing the cave and have decided to protect the cave from disturbance by including it in the Natural Area.

3.6 TRANSFER OF DEVELOPMENT AREA 4

3.6.1 Summary of Comments

The commentors suggested that the EA Addendum address the adverse environmental impacts of developing Area 4 of Parcel ED-1. They also recommended that this area be excluded from development and added to the Natural Area because the area would be affected by constructing a bridge and/or undertaking road improvements to the existing gravel road to provide suitable access. It is believed that widening and paving the existing road would result in significant fragmentation by separating the Natural Area that runs along East Fork Poplar Creek (EFPC) from McKinney Ridge, which supports the breeding of a number of bird species of conservation concern. The question is raised of how the economic value of developing this area could possibly justify the environmental impact of these actions.

Commentors: AFORR, EQAB, TCWP, TCL, Sonder, and Webb.

3.6.2 Response

Development Area 4 is currently leased to CROET, consistent with the analysis performed in the 1996 EA. The results of the evaluation were the determination that approximately 55 acres, which included this area, was suitable for development. DOE has revised the EA Addendum to address potential adverse impacts to 1) the 1.5 mile section of the North Boundary Greenway that borders a portion of Development Area 4 and 2) migratory birds that could result from future development of this area. Based on the comment received, DOE would encourage the City of Oak Ridge and Horizon Center LLC to enter into discussions regarding the continued use of the greenway. In addition, mitigative measures should be enlisted as well as improvements that may enhance the public's use of the area (e.g., include a foot/bike path as part of the road improvements).

3.7 OVERSIGHT OF CROET'S ACTIVITIES

3.7.1 Summary of Comments

A few comments were received that pertained directly to CROET. Specifically, it was recommended that there be mandatory oversight/auditing of CROET or its subsidiary corporations by the city, DOE, or an independent entity. Commentors were also concerned with the financial aspects surrounding the sale of portions of Parcel ED-1 by CROET. Specifically, questions were raised regarding how the money would be distributed and to whom.

Commentors: AFORR, CAP, TCL, Johnson, Schramm, and Webb.

3.7.2 Response

CROET, including its subsidiaries, is the DOE-recognized, community reuse organization for Oak Ridge. Community reuse organizations were established and funded by DOE to implement community transition activities under Sect. 3161 of the National Defense Authorization Act for Fiscal Year 1993 [42 *U.S. Code (U.S.C.)* 7274 h]. CROET is also a 501(c)(3) entity, and as such is subject to oversight/auditing through a number of different mechanisms. As a public entity, CROET is required to file an annual tax return (Form 990) that is a matter of public record. In addition, CROET has annual audits conducted on their financial activities and provides that information to DOE and to the Federal Audit Clearinghouse. Also, DOE will be providing oversight of monitoring/mitigation since the Natural Area will remain under DOE ownership.

Horizon Center LLC has stated that money from the sale of portions of Parcel ED-1 will be used to fund additional infrastructure construction and improvements to the property, as well as improvements to facilities currently leased at ETPP.

3.8 SOCIOECONOMICS

3.8.1 Summary of Comments

Comments were received indicating that the consideration of economic impacts in the EA Addendum is inadequate because a number of significant economic issues received no attention or evaluation. One commentor stated that the EA Addendum needed to address the effectiveness of CROET's operations to date. Another commentor felt that an evaluation was needed to determine whether future development occurring on Parcel ED-1 would be more advantageous to the community (e.g., tax revenue) under the current leasing arrangement, CROET ownership, or ownership by some other entity. A commentor also wanted to know how much CROET expects to realize on the sale of the land available for development and what the city could expect in property and other taxes from development. A request was made that dollar estimates be provided at 2-, 5-, and 10-year intervals.

One commentor indicated that more recent data on city budgets is available and should, therefore, be used. It was also suggested that Table 5.1 of the EA Addendum presents unrealistic employment projections and that this should be corrected. Another commentor stated that Sect. 5.2.3 of the EA Addendum treats employment impacts in a cavalier manner and that the historical period used for comparison should be limited, because of the unrealistically large impacts from 1943-1950.

Commentors: CAP, Peelle, Schramm, Sigal, and Webb.

3.8.2 Response

It was determined that the bounding socioeconomic impact analysis conducted for the 1996 EA was still valid for the current proposed action. This determination is based on the estimate of direct and indirect jobs created and the minor demographic changes that have occurred. However, in response to the comments received, new information pertaining to local government revenues (i.e., property and sales tax) is provided in Sect. 5.2.3 of the EA Addendum. In addition, Table 3.2 has been revised and includes the current City of Oak Ridge budget information.

The evaluation in the EA Addendum is intended to assess the potential impacts from transferring Parcel ED-1 to Horizon Center LLC versus the potential impacts that were evaluated for the leasing action in the 1996 EA. For this reason, the economic effectiveness of CROET's and Horizon Center

LLC's operations is not within the scope of the EA Addendum. Under the current lease, the City of Oak Ridge can only tax improvements made by CROET or its subleases on Parcel ED-1. Since CROET is a not-for-profit organization, they cannot be taxed. Under the proposed transfer, Horizon Center LLC would be able to sell portions of the parcel to developers and the property and improvements by the new owners would be subject to property and sales taxes. This would indicate that the proposed transfer should be more advantageous to the community (e.g., tax revenue) than the current leasing arrangement.

Socioeconomic impacts are not only important in themselves, but also for the secondary positive and negative effects they may have on the community. The estimate of the number of jobs created represents the maximum potential impact on the local economy and, therefore, the most likely to generate adverse environmental effects. The purpose is not to forecast economic activity but to make sure that reasonably foreseeable, indirect effects are appropriately identified and considered.

3.9 UTILITIES

3.9.1 Summary of Comments

Comments were received requesting clarification on the discussion of utilities that is presented in the EA Addendum. A suggestion was made to differentiate actual utility upgrade commitments from intentions that are contingent on other actions. Another suggestion is to identify the initial water source for the parcel, and the expected availability of this source until long-term connections can be completed to the city system. One commentor wanted a discussion added regarding the expected future viability of the ETTP wastewater treatment plant, since the connection to the city plant may be delayed. Also, it was suggested that alternative plans for the future development of the site should be discussed since it is dependent upon the completion of the cities "looped" service, which may or may not be implemented. Another commentor wanted to know the anticipated costs (itemized) of additional infrastructure for development of the remainder of the developable portion of Parcel ED-1. It was also requested that the natural gas connection for the parcel be shown on a figure.

Commentors: AFORR, CAP, TDEC-DOE, Peelle, and Sigal.

3.9.2 Response

In response to the comments, DOE has provided additional information in Sect. 3.4 of the EA Addendum regarding planned utility upgrades that have the potential to affect Parcel ED-1. DOE has also updated, to the extent possible, the information regarding the current DOE and City of Oak Ridge utility infrastructure. The anticipated cost for infrastructure development of Parcel ED-1 is not within the scope of the EA Addendum, since DOE will not incur those costs. Also, because of security concerns, DOE has decided to not indicate certain utility routes in the EA Addendum.

3.10 CUMULATIVE IMPACTS

3.10.1 Summary of Comments

Several comments were received that were specific to the way that cumulative impacts are addressed in the EA Addendum or to the information that was used in the cumulative impacts section. As an example, one commentor suggested that the cumulative impacts of all the activities identified in Sect. 5.1 should be evaluated against the values and missions of the ORR and not just against the transfer of Parcel ED-1. Other commentors suggested that some of the activities presented in Sect. 5.1 should be updated.

Another commentor questioned the conclusion that there would be no cumulative adverse impacts to biodiversity as a result of the proposed transfer.

Commentors: CAP, TCWP, TCL, Peelle, and Webb.

3.10.2 Response

The NEPA regulations define cumulative impact as, “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions...” The cumulative impacts of developing Parcel ED-1 into an industrial/business park were evaluated in the 1996 EA. As stated previously, the EA Addendum has been developed to evaluate the transfer option, which was identified in the 1996 EA but not evaluated. For this reason, it is not appropriate to evaluate cumulative impacts on a broader scale than what is presented. Please note that certain cumulative impacts addressed in the 1996 EA are supplemented with additional information in the EA Addendum (i.e., land use, air quality, socioeconomics, transportation, and biodiversity). As suggested, updated information has been added to Sect. 5.1 of the EA Addendum, where applicable.

DOE has concluded that the impacts of the proposed action will not adversely impact the biodiversity of the region because it is reasonable to believe that large areas of the ORR will continue to be protected and not developed either by the private sector or as part of the DOE mission.

3.11 INVASIVE/EXOTIC SPECIES

3.11.1 Summary of Comments

Comments were received that were specific to the use of invasive species on Parcel ED-1. For example, it was suggested that CROET should not be held accountable for natural succession within the natural or sensitive areas and that CROET should only be held accountable for any invasive species it is responsible for directly introducing. One commentor stated that the prohibition on using non-native grasses for landscaping should be removed, while another stated that the language in Sect. 3.1.3 of the MAP needed to more thoroughly address native plants and minimizing lawn areas. Another suggested that DOE add a discussion of increased invasive species due to development to Sects. 4 and 5.2.5 in the EA Addendum.

Commentors: AFORR, CROET, CAP, TCWP, and Lenhard.

3.11.2 Response

Horizon Center LLC will only be held accountable for natural succession within the Natural Area with respect to preventing and controlling exotic/invasive plants in areas of known sensitive plant communities. Horizon Center LLC is also encouraged to continue its efforts to prevent the introduction of non-native species on the parcel and should be commended for their efforts to date. Especially important is the continuance of including the native plant recommendations and list of plant species to avoid in Horizon Center Covenants, Conditions, and Restrictions. Horizon Center LLC is not prohibited from using non-native grasses (i.e., fescue) for landscaping. DOE only suggests that lawn areas be kept to a minimum in order to control the spread of these species into adjacent areas of natural vegetation. Sections 4 and 5.2.5 in the EA Addendum have been revised to provide additional information regarding invasive and exotic species.

3.12 NEPA PROCESS

3.12.1 Summary of Comments

Several comments were received regarding the NEPA process, including the level of NEPA analysis, the selection of alternatives, and the subsequent analysis of alternatives. Commentors stated that the proposed transfer was a major federal action significantly affecting the human environment, thus requiring an Environmental Impact Statement (EIS). One commentor requested that DOE explain what a “Draft EA Addendum” is under the NEPA regulations. The request was also made that the names of the preparers of the documents be provided.

Alternatives that commentors thought should have been included and analyzed are: extending CROET’s lease for 99+ years, voiding the current lease after 10 years and then offering the parcel to all interested parties, ceding/selling a portion of the land to other entities, ceding/selling the parcel to the City of Oak Ridge, or returning the parcel to DOE management.

One commentor suggested that DOE should not rely on the 1996 EA to dismiss impacts but should evaluate unanticipated impacts that would be carried over under the proposed action, or its as yet unanalyzed alternatives. An example that was provided was that the 1996 EA and MAP did not evaluate impacts to the Natural Area, which may have occurred during the construction of the bridges, roads, and utility infrastructure.

Commentors: FWS, Peelle, Schramm, and Webb.

3.12.2 Response

After consultation with appropriate parties (e.g., coordination with DOE Headquarters), DOE has determined that the EA Addendum is the appropriate supplemental documentation for the proposed action to transfer Parcel ED-1 to Horizon Center LLC. This is because the action is primarily administrative in nature and involves going from a lease to ownership of the property. The EA Addendum updates information that was used in the 1996 EA and forms a link between that EA and the new proposed action of transfer. The transfer and the associated documentation will require the Secretary of Energy’s approval and will lie before the appropriate congressional defense committees before the transfer process can be finalized. DOE does not believe that an EIS is required because the proposed transfer is not a major federal action significantly affecting the human environment. As a result of the transfer, Horizon Center LLC will continue to develop portions of Parcel ED-1 as an industrial/business park. This action was evaluated in the 1996 EA that lead to a mitigated Finding of No Significant Impact and MAP.

Since this was an addendum to the existing 1996 EA, it was appropriate that only the proposed transfer be evaluated, as it was one of the alternatives dismissed from further consideration in the 1996 EA. DOE decided to analyze this alternative in the EA Addendum because of new information presented to them that transfer of ownership was necessary to meet the purpose and need of the original EA. Although only one alternative was evaluated, it included two options (see Sect. 2 of the EA Addendum), one of which DOE has decided to implement (i.e., transfer of only the developable portions of Parcel ED-1). The “new” no action alternative presented in the EA Addendum is the continuation of the proposed action evaluated in the 1996 EA (i.e., leasing). The DOE NEPA regulations (10 *CFR* 1021) do not require that a list of preparers be included for an EA. DOE believes that the qualifications of the contractor used for the preparation of these documents were adequate for the task, and they worked under the direction provided by DOE.

Termination of the lease to offer it to other parties is not an option. CROET, and its subsidiaries, is still the DOE-recognized community reuse organization for Oak Ridge. In accordance with the DOE-issued

interim final rule, “Transfer of Real Property at Defense Nuclear Facilities for Economic Development” (10 *CFR* Part 770), CROET submitted a proposal (Sects. 770.6 and 770.7), and later updated it, requesting transfer of Parcel ED-1 and DOE is acting on that request. Furthermore, DOE believes that the transfer of Parcel ED-1 to Horizon Center LLC will help to provide for the ultimate development of the parcel in order to meet the goal of continuing and furthering DOE support of economic development in the region.

3.13 LAND USE PLANNING

3.13.1 Summary of Comments

Commentors stated that the proposed transfer of Parcel ED-1 should be considered in context of the ORR as a whole, including DOE’s missions, long-term missions of other government agencies, DOE’s expectations for continued downsizing, the trend to transfer land piecemeal, and the impact of such on the value and integrity of the ORR natural areas and the reservation as a whole. Commentors were in favor of a comprehensive land use plan and assessment for the ORR that includes the entire reservation. One commentor recommended that DOE prepare a comprehensive plan for the reservation, which would protect lands in perpetuity for conservation purposes and make provisions for conservation research and national security projects. Another commentor stated that transfer of ORR lands for economic development is a permanent change in status for undeveloped land and that there is no equivalent protection for the undisturbed natural areas of the reservation.

Commentors: CAP, TCWP, TWRA, and Johnson.

3.13.2 Response

A review of the present and future programmatic needs for various land areas of the ORR was conducted as part of the original decision to lease Parcel ED-1. A summary of that review process is presented in the 1996 EA. The comments pertaining to land planning are outside of the scope of the EA Addendum, which is to evaluate the potential environmental impacts of transferring portions of Parcel ED-1 to Horizon Center LLC. The impacts of ORR land transfers, the value of the ORR, and ongoing DOE-Oak Ridge Operations missions and future mission requirements are being addressed as part of the ORR Land Use Planning Process currently being conducted by Oak Ridge National Laboratory. Although this land use planning effort is focused on the northwestern portion of the ORR, it also is taking into account the cumulative impacts that various land uses for this area could have on the remainder of the reservation.

3.14 TRANSFER OF PARCEL ED-1 TO AN ENTITY OTHER THAN CROET

3.14.1 Summary of Comments

Commentors suggested that Parcel ED-1 should be transferred to the City of Oak Ridge or made available to any interested public or private sector entity. A commentor suggested that the parcel should be transferred to the city with CROET managing Horizon Center LLC under its current lease. They did not believe that the city would reject a request by CROET to sell a portion of the parcel if an attractive industry wanted to locate in Parcel ED-1 and own, rather than sub-lease, its land. It was also stated that the city has made a substantial investment of taxpayer money and that by waiving its rights to the self-sufficiency parcel, is foregoing a substantial asset. A commentor further stated that if transfer to a single entity is to be considered, a lack of interest by other parties should be clearly documented and that the documentation would go well beyond recording the Oak Ridge City Council’s waiver of interest.

Commentors: CAP, Johnson, and Schramm.

3.14.2 Response

In accordance with the DOE-issued interim final rule, “Transfer of Real Property at Defense Nuclear Facilities for Economic Development” (10 *CFR* Part 770), CROET submitted a proposal (Sects. 770.6 and 770.7), and later updated it, requesting transfer of Parcel ED-1. CROET, and its subsidiaries, is the DOE-recognized, community reuse organization for Oak Ridge. [Community reuse organizations were established and funded by DOE to implement community transition activities under Sect. 3161 of the National Defense Authorization Act for Fiscal Year 1993 (42 *U.S.C.* 7274 h)]. On May 6, 2002, the city waived its self-sufficiency rights. DOE received no other requests from any other interested parties or entities, and therefore is proceeding with evaluating the transfer to Horizon Center LLC.

3.15 REQUIREMENTS UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT

3.15.1 Summary of Comments

A few comments received were specific to the listing of the ORR, including Parcel ED-1, on the National Priorities List (NPL) and the requirements under CERCLA that must be met. A commentor noted that since no CERCLA decision has been made concerning the Lower EFPC surface water and sediments, the EA Addendum should address DOE’s plans to insure appropriate activities are completed in accordance with Sect. 120(h) of CERCLA. One commentor stated that indemnification of the development areas should flow with the property and that the property should be de-listed from the NPL.

Commentors: CROET, TN, and TDEC-DOE.

3.15.2 Response

In a letter dated August 21, 1995, and again on August 21, 2001, the U.S. Environmental Protection Agency (EPA) concurred with DOE’s determination that Parcel ED-1 is not contaminated, with the exception of EFPC and Bear Creek and their associated floodplains (see Appendix K in the 1996 EA and Appendix D in the EA Addendum). Because DOE has decided to maintain ownership of the Natural Area, which includes EFPC and its floodplain, the only areas that will be transferred have already received a “clean parcel determination” under CERCLA Sect. 120(h)(4).

Initially DOE determined that indemnification would only be provided to Horizon Center LLC and that it would not be extended to its successors, transferees, or assigns. However, in February 2003, an amendment was passed as part of the FY 2003 Omnibus Appropriations (P.L. 108-7) that allows for extending indemnification to Horizon Center LLC’s successors, transferees, or assigns. Therefore, the Quitclaim deed has been revised to allow for indemnification to run with the land. The decision to de-list Parcel ED-1 from the NPL is an EPA decision.

3.16 EDITORIAL COMMENTS

3.16.1 Summary of Comments

Commentors noted editorial errors and pointed out areas where clarification was needed.

Commentors: AFORR and CAP.

3.16.2 Response

The final EA Addendum and MAP have been reviewed for editorial errors, and corrections have been made as appropriate.

3.17 CULTURAL RESOURCES

3.17.1 Summary of Comments

A commentor suggested that DOE be more specific on how to implement the physical inspections described in Sect. 4.2 of the EA Addendum.

Commentors: TDEC-DOE.

3.17.2 Response

DOE has revised Sect. 4.2 of the EA Addendum to include more details on the inspections. This information is also provided in Sect. 3.2 of the MAP.

ATTACHMENT A

**COMMENTS ON THE DRAFT
ENVIRONMENTAL ASSESSMENT ADDENDUM
AND MITIGATION ACTION PLAN FOR THE
PROPOSED TITLE TRANSFER OF PARCEL ED-1**

Perry, Walter N

From: Ed Sonder [exs@ornl.gov]
Sent: Thursday, June 13, 2002 1:51 PM
To: NEPA (Stakeholders comments mailbox)
Subject: Parcel ED1

The Oak Ridge reservation has unusually rich bio-diversity and as such should become a permanent preserve. Removing of a few SMALL parcels from the periphery might be justified, but continuous whittling away of large areas for development will destroy the value of the reservation as a permanent natural preserve.

Therefore, as a citizen and resident of Oak Ridge I urge that the transfer to CROET of parcel ED1 be accompanied by at least the two following actions.

1) PERMANENT Natural area protection of the 531 area exclusion zone. This could be accomplished, for example, by donating a conservation easement for this zone to an organization such as the nature Conservancy.

2) The 45 acres, labeled Parcel 4, should be added to the 531 acre exclusion zone, as suggested by AFORR.

Sincerely,

Edward Sonder
102 Woodridge Lane
Oak Ridge TN 37830

Perry, Walter N

From: MarcyRReed@aol.com
Sent: Friday, June 14, 2002 1:21 PM
To: NEPA (Stakeholders comments mailbox)
Subject: Comments on Draft EA and MAP for proposed transfer of parcel ED-1

I am submitting these comments on behalf of TCWP. They are also attached as a MS Word file.

Thank you,
 Marcy Reed
 Executive Director
 865-481-0286

Tennessee Citizens for Wilderness Planning

Comments on Draft Environmental Assessment Addendum and Mitigation Action Plan for Proposed Transfer of Parcel ED-1 to the

Community Reuse Organization of East Tennessee – May 2002

These comments are submitted on behalf of Tennessee Citizens for Wilderness Planning (TCWP), a 500-member, non-profit organization dedicated to protecting natural lands and waters through public ownership, legislation, and cooperation with the private sector.

TCWP remains strongly in favor of a comprehensive land use plan and assessment for the Oak Ridge Reservation (ORR), a plan that will include the **entire** Reservation. Piece-meal development does not thoroughly evaluate cumulative impacts on the rich biodiversity of the ORR. Because of this, an Environmental Impact Statement or similar process is still needed for the entire ORR. Such a plan and evaluation should include cost/benefit analysis of development initiatives on the ORR. While TCWP supports the ongoing Land Use Planning Process that is being carried out by the Land Use Focus Group, the area of study for this process has been limited to surplus land in the northwestern section of the ORR. Thus, this otherwise commendable process cannot achieve the goal of cumulative impact assessment.

1. The Addendum includes an extensive section on cumulative impacts that enumerates current and planned activities in the area. However, the perspective of this section is only the pertinence of these actions to the single transfer of ED-1. The cumulative impacts to the value and missions of the ORR are not evaluated. In fact, in lines 12-14 of Sect. 5.2, the Addendum uses the additional activities to downplay the impacts of the single ED-1 transfer: "Overall, the proposed transfer of Parcel ED-1 would not have a large incremental impact on the environment when added to the other past, present, and reasonably foreseeable future actions discussed in Sect. 5.1." Similarly, Sect. 5.2.1 notes, "Because the total area is small compared to the remaining ORR land, the change in land use would result in negligible cumulative land use impacts." These statements attempt to justify continued whittling away of the ORR in small pieces without true cumulative impact assessment. This approach is a violation of the National Environmental Policy Act.

2. Permanent protection for the Natural Area of ED-1 is vital. Protection of this area was a primary mitigating action leading to a Finding of No Significant Impact (FONSI) for ED-1 in 1996, and DOE is responsible for assuring continued protection. The Environmental Assessment (EA) and Mitigation Action Plan (MAP) are extremely vague regarding how the deed transfer would ensure this continued protection.

It is our understanding that deed restrictions are difficult and costly to enforce. Only the previous owner, in this case DOE, is legally entitled to assert violation of the deed restriction, and redress typically is restricted to re-purchase of the lands and buildings at current market value. Under the deed-restriction scenario, DOE would need to continue monitoring to discover any violations, take legal action against new owner(s), and bear the cost of such actions. In addition, deed restrictions can be subsequently dropped, as has been observed recently with the transfer of the Boeing land.

To provide protection in perpetuity for the Natural Area, the recommended vehicle is a fee-title-type transfer via donation of the land

6/17/02

to an agency or organization (e.g., The Nature Conservancy) that is equipped to manage land for conservation purposes. An acceptable alternative is donation of a conservation easement to such an entity. The land transfer or easement should not relieve the owners of ED-1 development areas of clearly defined and enforceable requirements to prevent damage to the Natural Area.

3. TCWP is concerned that the slow pace of leasing the development area is not being adequately factored into assessment of impacts on the Natural Area. Section 4 of the Addendum notes that the "majority of the impacts have already occurred on the parcel as a result of construction activities," whereas only 85 of the 426 acres for development have been disturbed to date. Considerable additional activity, with high potential for deleterious impacts, remains. Monitoring requirements must cover the entire period of construction, and monitoring procedures must specify mechanisms capable of determining that all requirements are met.
4. The apparent impact of siltation from an exposed construction area on the population of the Tennessee Dace in Dace Branch during a 1999 storm event is of concern. While the Addendum conveys the expectation that the population will recover, based on discovery of a population upstream from construction influence, this setback is evidence that reliance on existing measures is not well founded and that constant vigilance, as well as advancements in the prevention of construction impacts, is needed.
5. The MAP is vague and provides no oversight or accountability of CROET. Much is left to the discretion, interpretation, and "good faith effort" of CROET. The MAP needs to clearly outline specific requirements, enumerate report recipients and reviewers, and require public participation in reviews and on the advisory panel. The advisory panel should be mandatory.
6. Language in MAP Sect. 3.1.3 is weak with respect to native plants and minimizing lawn areas. Already non-native plants are being incorporated into the landscape in developed areas. Quantifiable requirements for minimizing land area disturbed at any one time are needed.
7. TCWP supports the recommendation of the Advocates for the Oak Ridge Reservation (AFORR) to exclude the 45-acre Parcel 4 from development and add it to the Natural Area. This recommendation is based on the isolation of this parcel from the other development areas, which would entail the need to provide development access by constructing a bridge and/or undertaking damaging road improvement to an existing greenway. The economic value of developing Parcel 4 cannot possibly justify the environmental impact of these actions.
8. TCWP also supports the AFORR recommendation to modify the MAP to include the documented recent presence of the Cerulean Warbler adjacent to and within the ED-1 Natural Area. This species is currently listed by the State as "In Need of Management," and state and federal reviews for upgrading its protection status are in progress. The presence of this species and its location within the tract further support the exclusion of Parcel 4 from development.

TCWP appreciates the opportunity to convey these comments and welcomes questions and further discussion.

Tennessee Citizens for Wilderness Planning
Comments on Draft Environmental Assessment Addendum and Mitigation Action Plan
for Proposed Transfer of Parcel ED-1 to the
Community Reuse Organization of East Tennessee – May 2002

These comments are submitted on behalf of Tennessee Citizens for Wilderness Planning (TCWP), a 500-member, non-profit organization dedicated to protecting natural lands and waters through public ownership, legislation, and cooperation with the private sector.

TCWP remains strongly in favor of a comprehensive land use plan and assessment for the Oak Ridge Reservation (ORR), a plan that will include the *entire* Reservation. Piece-meal development does not thoroughly evaluate cumulative impacts on the rich biodiversity of the ORR. Because of this, an Environmental Impact Statement or similar process is still needed for the entire ORR. Such a plan and evaluation should include cost/benefit analysis of development initiatives on the ORR. While TCWP supports the ongoing Land Use Planning Process that is being carried out by the Land Use Focus Group, the area of study for this process has been limited to surplus land in the northwestern section of the ORR. Thus, this otherwise commendable process cannot achieve the goal of cumulative impact assessment.

1. The Addendum includes an extensive section on cumulative impacts that enumerates current and planned activities in the area. However, the perspective of this section is only the pertinence of these actions to the single transfer of ED-1. The cumulative impacts to the value and missions of the ORR are not evaluated. In fact, in lines 12-14 of Sect. 5.2, the Addendum uses the additional activities to downplay the impacts of the single ED-1 transfer: "Overall, the proposed transfer of Parcel ED-1 would not have a large incremental impact on the environment when added to the other past, present, and reasonably foreseeable future actions discussed in Sect. 5.1." Similarly, Sect. 5.2.1 notes, "Because the total area is small compared to the remaining ORR land, the change in land use would result in negligible cumulative land use impacts." These statements attempt to justify continued whittling away of the ORR in small pieces without true cumulative impact assessment. This approach is a violation of the National Environmental Policy Act.
2. Permanent protection for the Natural Area of ED-1 is vital. Protection of this area was a primary mitigating action leading to a Finding of No Significant Impact (FONSI) for ED-1 in 1996, and DOE is responsible for assuring continued protection. The Environmental Assessment (EA) and Mitigation Action Plan (MAP) are extremely vague regarding how the deed transfer would ensure this continued protection.

It is our understanding that deed restrictions are difficult and costly to enforce. Only the previous owner, in this case DOE, is legally entitled to assert violation of the deed restriction, and redress typically is restricted to re-purchase of the lands and buildings at current market value. Under the deed-restriction scenario, DOE would need to continue monitoring to discover any violations, take legal action against new

owner(s), and bear the cost of such actions. In addition, deed restrictions can be subsequently dropped, as has been observed recently with the transfer of the Boeing land.

To provide protection in perpetuity for the Natural Area, the recommended vehicle is a fee-title-type transfer via donation of the land to an agency or organization (e.g., The Nature Conservancy) that is equipped to manage land for conservation purposes. An acceptable alternative is donation of a conservation easement to such an entity. The land transfer or easement should not relieve the owners of ED-1 development areas of clearly defined and enforceable requirements to prevent damage to the Natural Area.

3. TCWP is concerned that the slow pace of leasing the development area is not being adequately factored into assessment of impacts on the Natural Area. Section 4 of the Addendum notes that the "majority of the impacts have already occurred on the parcel as a result of construction activities," whereas only 85 of the 426 acres for development have been disturbed to date. Considerable additional activity, with high potential for deleterious impacts, remains. Monitoring requirements must cover the entire period of construction, and monitoring procedures must specify mechanisms capable of determining that all requirements are met.
4. The apparent impact of siltation from an exposed construction area on the population of the Tennessee Dace in Dace Branch during a 1999 storm event is of concern. While the Addendum conveys the expectation that the population will recover, based on discovery of a population upstream from construction influence, this setback is evidence that reliance on existing measures is not well founded and that constant vigilance, as well as advancements in the prevention of construction impacts, is needed.
5. The MAP is vague and provides no oversight or accountability of CROET. Much is left to the discretion, interpretation, and "good faith effort" of CROET. The MAP needs to clearly outline specific requirements, enumerate report recipients and reviewers, and require public participation in reviews and on the advisory panel. The advisory panel should be mandatory.
6. Language in MAP Sect. 3.1.3 is weak with respect to native plants and minimizing lawn areas. Already non-native plants are being incorporated into the landscape in developed areas. Quantifiable requirements for minimizing land area disturbed at any one time are needed.
7. TCWP supports the recommendation of the Advocates for the Oak Ridge Reservation (AFORR) to exclude the 45-acre Parcel 4 from development and add it to the Natural Area. This recommendation is based on the isolation of this parcel from the other development areas, which would entail the need to provide development access by constructing a bridge and/or undertaking damaging road improvement to an existing

greenway. The economic value of developing Parcel 4 cannot possibly justify the environmental impact of these actions.

8. TCWP also supports the AFORR recommendation to modify the MAP to include the documented recent presence of the Cerulean Warbler adjacent to and within the ED-1 Natural Area. This species is currently listed by the State as "In Need of Management," and state and federal reviews for upgrading its protection status are in progress. The presence of this species and its location within the tract further support the exclusion of Parcel 4 from development.

TCWP appreciates the opportunity to convey these comments and welcomes questions and further discussion.

Perry, Walter N

From: Warren Webb [WebbWarren@msn.com]
Sent: Sunday, June 16, 2002 5:44 PM
To: NEPA (Stakeholders comments mailbox)
Subject: Comments on ED-1

Following below and attached as a WordPerfect file are comments on the proposed action. Please consider them in your analysis.

Comments on the "Draft EA Addendum for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee" (DOE/EA-1113-A)

Submitted by: Warren Webb

228 West Tennessee Ave

Oak Ridge, TN 37830

June 13, 2002

General Comments

1. This is a major federal action significantly affecting the human environment, requiring an EIS. This is particularly so since the proposal is to transfer land, including custodianship of a sizeable natural area, to a development entity, with meaningful restrictions and enforcement provisions (deed restrictions notwithstanding). Instead, DOE has elected to issue an "EA Addendum." Please explain what is a "Draft EA Addendum" as a National Environmental Policy Act (NEPA) document under CEQ and DOE regulations. The DOE issued an EA for an action that should have been an EIS. The result of that was a "mitigated FONSI" – itself a somewhat strange creature – which has been subsequently violated (see comments below), and now we have this other strange creature. The document, whatever it is, should put this all in context for members of the public.
2. Please explain why you have evaluated only one alternative (dismissing the no action alternative) in contravention of the National Environmental Policy Act. Other reasonable alternatives are possible: ceding/selling a portion of the land to other entities; ceding/selling the parcel to the City of Oak Ridge; returning the parcel to DOE management.
3. Please explain how the original Mitigation Action Plan (MAP) transformed into the MAP that you present here. The original MAP did not allow for the roads and bridges that have been built. The Comprehensive Development Plan presented and partially implemented by CROET was not submitted for public review and was not appropriately reviewed by state agencies, as shown by your own documents.

6/17/02

4. The preparers are not given – although this has not been presented as an EIS (as it should have been) – it has been put out for public comment, and the public has a right to know who the preparers are and what are their qualifications.

Specific Comments

1. Section 1.1: DOE's need poses an unanswered question – would the transfer of ED-1 to CROET "help offset economic losses . . ." Because this has been postulated in this section, it is incumbent on DOE to analyze this question in the EA. At present, it does not. Please explain.

2. Section 1.2 states (lines 18- 20) that "The MAP accomplished this by excluding areas . . . from disturbance and development . . ." In fact, two large roads/bridges were put across the "Exclusion Area." – I would call this "disturbance and development." Please explain what public and agency reviews were accomplished before undertaking these actions, and address the potential environmental impacts of such actions in the body of your report. Please also reference Annual Reports subsequent to 1998.

3. Section 2, paragraph 2 (line 11). This paragraph is based solely on CROET's alleged information to DOE, which is not supplied. Are we (the public) really supposed to believe this? Please supply the information that CROET shared with you which would help us understand the economic consequence of the action for the community.

4. Section 2, paragraph 3, lines 21 et seq. Several options are mentioned in this paragraph which should be considered as alternatives in the "EA Addendum." Transfer of the "Exclusion Area" to another entity is of particular interest. Why is this option not considered further?

5. Section 2, paragraph 4, lines 31 et seq. This paragraph states the continued development would be conducted outside of the Natural Area. How will CROET accomplish this while gaining access to Area 4? Please explain.

6. Section 2, paragraph 5, lines 36 et seq. Please explain how deed conditions would be enforced by DOE. It seems unlikely that DOE would have the resources or the motivation to enforce any deed restrictions.

7. Section 3.2, paragraph 1. You state that "development plan concepts" were "discussed" with TWRA and other entities. Although these discussions may have been "approved by DOE," that does not in itself constitute approval by agencies. Please supply discussion and agency comments to support your contention that all parties approved of this action, or, if not, what were objections or unresolved issues.

8. Section 3.3: Here you present a lot of data, because they are available. Yet you have nothing to say about it in the "Environmental Consequences" section. In the "Purpose and Need" section, you said that economic issues were paramount. Please explain how you can omit analysis of the data you present in this section in the Environmental Consequences section.

9. Section 4: almost all of two pages are devoted to the environmental consequences of this significant federal action. DOE seems to think that no other issues arise other than listed species and cultural resources. In fact, significant socioeconomic effects could arise, as well as impacts to neotropical migratory birds and other species. Statements that no further intrusions into the natural area (e.g., page 12 lines 21-22) are not convincing if CROET intends to gain access to Area 4. An alternative would be to develop the existing road on the west boundary, but this would itself further fragment forested habitat for birds and other animals and would

destroy a large portion of an existing greenway. Please add an evaluation of these eventualities.

10. Section 4, page 12, lines 28-31: The final paragraph to the introduction of Section 4 states the "DOE has determined that no additional impacts would occur with transfer of the parcel beyond those presented in . . . the 1996 EA." In fact, impacts beyond the 1996 may already have occurred or be occurring. This is because the 1996 EA, and the MAP which accompanied the "mitigated FONSI," did not contemplate the significant incursions into the then Exclusion Zone (now Natural Area) which were subsequently implemented without effective public and agency review (the Comprehensive Development Plan prepared by Lockwood Greene for CROET.) The record from Annual Reports shows that at least one agency raised issues which were never resolved. That notwithstanding, the development plan proposed two significant bridges and other roadway fragmentations of natural area corridors which have never been evaluated for impacts. Thus, DOE should not rely on the 1996 EA to dismiss impacts but should evaluate unanticipated impacts that would be carried over under the proposed action. Please explain how these subsequent inadequately reviewed effects would carry over to the proposed action, or its as yet unanalyzed alternatives.

11. Section 5.1: DOE spends almost all of three pages (more than the attention paid to Environmental Consequences) listing many other projects that may affect the proposed action. Interestingly, some analysis follows of socioeconomic impacts that may accrue from these projects (which are not evaluated in Section 4), yet no attempt is made to place this analysis relevant to the project. Without such analysis, this is simply a waste of paper. Please explain how the cumulative effects of other actions, including socioeconomic effects, would interface with this proposed action.

12. Section 5.2.5, page 20, lines 29 - 34 : These statements seem to imply that because "large areas" would remain (not a certain conclusion), the impacts of the proposed action are of no consequence and need not be evaluated. Please explain the reasoning supporting these statements.

Comments on the "Mitigation Action Plan for the Proposed Transfer of Parcel ED-2 to the Community Reuse Organization of East Tennessee, accompanying the "Draft EA Addendum for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee" (DOE/EA-1113-A)

1. Please give the names and qualifications of the various individuals conducting the bird surveys from which you produced your graphs.

2. Please present a discussion of how your analysis compares to trend analysis as described by the USGS.
3. Please present the data regarding corvids and nest parasites, and evaluate how these could affect bird breeding in the area (e.g., changing from a source area to a sink area). There is also the possibility of increased access of other nest predators, such as raccoons and skunks, which has not been evaluated here or in the "EA Addendum."

Memorandum

To: David Allen, Nancy Carnes, Katy Kates

CC: File-SMC

From: Susan Cange

Date: June 19, 2002

Re: Additional Comments on DOE/EA-1113-A, EA Addendum and Mitigation Action Plan for
Proposed Transfer of Parcel ED-1 to CROET

Below is a listing of additional comments submitted on the above subject document. Attached are copies of comments for your files.

1. Ed Sonder, June 13, 2002
2. Marcy R. Reed, on behalf of Tennessee Citizens for Wilderness Planning, June 14, 2002
3. Warren Webb, June 13, 2002
4. Herbert L. Harper, Executive Director and Deputy State Historic Preservation Officer,
Tennessee Department of Environmental and Conservation, May 24, 2002

If you have questions, please call me at 576-0334.

Susan:af-d

Attachments: As Stated



TENNESSEE HISTORICAL COMMISSION
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
2941 LEBANON ROAD
NASHVILLE, TN 37243-0442
(615) 532-1550

May 24, 2002

Mr. David Allen
Department of Energy
Oak Ridge Operations Office
Post Office Box 2001
Oak Ridge, Tennessee 37831

RE: DOE, DRAFT ENVIRONMENTAL ASSESSMENT ADDENDUM, TRANSFER OF PARCEL
ED-1 TO CROET, OAK RIDGE, ROANE COUNTY, TN

Dear Mr. Allen:

At your request, our office has reviewed the above-referenced draft environmental assessment addendum in accordance with regulations codified at 36 CFR 800 (Federal Register, December 12, 2000, 77698-77739). Based on the information provided, and in accordance with our previous review of the archaeological survey of the area of potential effect, we find that the project area, as currently defined, contains no archaeological resources eligible for listing in the National Register of Historic Places.

This office has no objection to the implementation of this project. However, prior to transfer, and in accordance with our correspondence of April 29, 2002; please submit the proposed final deed restrictions to this office for our review and comment. If project plans are changed, please contact this office to determine what further action, if any, will be necessary to comply with Section 106 of the National Historic Preservation Act.

Your cooperation is appreciated.

Sincerely,

Herbert L. Harper
Executive Director and
Deputy State Historic
Preservation Officer

HLH/jmb

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AMESQ

Log No. 603093

Date Received JUN 3 2002

File Code _____



June 13, 2002

Mr. David Allen, SE-30
U.S. Department of Energy
P.O. Box 2001
Oak Ridge, Tennessee 37831-2001

Subject: Comments Regarding the Environmental Assessment Addendum for Parcel ED-1

Dear Mr. Allen:

I have read with great interest the Environmental Assessment Addendum for Parcel ED-1 and would like to make the following comments.

The site should be transferred to the Community Reuse Organization of East Tennessee (CROET) as quickly as possible and with as few restrictions as possible. The development of ED-1, the related environmental issues and this transfer have been well publicized to a broad and diverse audience. The DOE effort for expeditious transfer of the property with adequate review should be applauded.

The purpose of the transfer is equally clear. It is essential that the area have a strong industrial base that augments and supports the existing DOE missions, and helps the region lessen the region's economic dependence on the Department of Energy's annual appropriations. That requires first class industrial facilities like those on Parcel ED-1 and ongoing partnerships between the Department and the community on a number of related activities.

We believe that the requirements for environmental monitoring should be simplified. The ultimate users of the park, new industries to our region, should be guided by the zoning codes of the community and the development covenants incorporated into the center's by-laws. Each requires protections of the environment and development of quality spaces.

The mission of the CROET is to bring in new companies and jobs to the region. The requirements within the Addendum seem to force the organization to become something that it is not, and mandate expenses not covered in the organization's mission. If taken to an extreme, the requirements regarding environmental monitoring and stewardship could make the mission of CROET impossible. We believe that all requirements that are not absolutely essential to the maintenance of the few threatened or endangered species on the site be removed.

Thank you for the opportunity of commenting on this most important issue.

Sincerely,

Jim Campbell
President, East Tennessee Economic Council

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AMEBQ

Log No. 126094

Date Received JUN 19 2002

File Code _____



Community House Organization
of East Tennessee

A FACSIMILE TRANSMITTAL

DATE: 6.13.02

TO: David Allen FAX: 576-0746

107 Elm Way

P.O. Box 2110

Oak Ridge, TN 37831-2110

phone: 865.482.0000

fax: 865.482.3801

FROM: Andrea

SUBJECT: E-A for Parcel ED-1

NO. OF PAGES (INCLUDING THIS SHEET) IS: 6

COMMENTS:

www.croet.com
info@croet.com

This facsimile contains PRIVILEGED and CONFIDENTIAL information intended only for the specific individual or organization named above. If you are not the intended recipient, notice is hereby given that any dissemination or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via U.S. Postal Service. Thank you.

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David R. Allen

U.S. Department of Energy

SE-30-1

P.O. Box 2001

Oak Ridge, TN 37831

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Log No. 66099

Date Received JUN 19 2002

File Code

The following are my comments on the Parcel ED-1 documents;

Environmental Assessment Addendum

- Please provide copies of the deed and transfer agreement to interested stakeholders. The ED-1 documents must not be finalized and the transfer of the property to CROET must not be completed until stakeholders have had the opportunity to review and comment on the deed and transfer agreement. The agreement is part of the NEPA action and thus subject to public comment.
- What is the "regulatory process" (p12 of the MAP) that enforces the deed restrictions and transfer agreement. PLEASE DESCRIBE
- Who is responsible for ensuring protection of natural, historic, and archaeological resources if CROET ceases to exist. Please discuss options.
- Will deed restrictions be included/transferred to new owners when CROET lands are sold?

- Who is responsible for oversight of new owners activities and their potential impact on the natural, historic, and archaeological resources?
- Who is responsible for development of infrastructure following transfer of ownership to CROET?
- How much does CROET expect to realize on the sale of the 426 acres of land available for development?
- What are the anticipated costs of additional infrastructure for development of the 426 acres? Please itemize.
- What can the city expect in property and other taxes from development? Please provide estimates of dollar amounts at 2, 5, and 10 year intervals.

With regard to the Mitigation Action Plan^(MAP):

- When property is sold by CROET who is responsible for ^{MAP} monitoring/reports?
- Who is responsible for oversight of the MAP requirements?

- Will MAP reports be available to the public?
- Will the public be informed of the availability and location of MAP reports? Please note location of reports.
- Where and when will the public find CROET's plans for ".... continuing to preserve and maintain the integrity of the Natural Area" (page 11 of the MAP)?

Thank you for your attention to these concerns.

Lorene L. Sigal

112 Parma Road

Oak Ridge, TN 37830

Tel. and FAX 482-4125

Note: While the EA Addendum (page 6) states that " ... no other parcels of sufficient size and contiguity were available on the ORR to meet the requirements for an industrial park.", this statement is misleading because there are other large tracts of industrial land adjoining/near the ORR (e.g., the TVA "Breder Reach" land, Roane Regional Business & Technology Park).

Log No. 66/01
JUN 19 2002

Comment on the May 2002
Environmental Assessment Addendum
for the
Proposed Transfer of Parcel ED-1
to the Community Reuse Organization of East Tennessee

File Code _____

June 14, 2002
Robert Peelle, 130 Oklahoma Avenue, Oak Ridge, TN 37830

SUMMARY: The proposed action involves a significant chunk of the present reservation, and is an environmentally important federal action! Its assessment must be treated seriously.

The mitigation of environmental degradation of the "exclusion" or "natural" area of ED-1 is unlikely to be effective over the life of the Horizon Center industrial park because of the general ineffectiveness of deed restrictions over extended periods. Also, under plausible circumstances local employment might be reduced by the proposed action.

These difficulties would be ameliorated if the CROET lease period were instead extended to 99+ years. However, if the property is to be transferred to CROET, land not yet sold should revert to the Department of Energy in case CROET should ever demise or fail to care for or utilize the land as agreed at the time of transfer. In any case, the Natural Area portion should not be transferred to any economic development group.

The transfer of ED-1 has quite different environmental consequences from the current lease program, since the large tract of largely open land will permanently reduce the productivity of the nearby woodland and stimulate the spread of open-land pests such as the fire ant. The EA Amendment for the proposed transfer should recognize this long term difference

COMMENTS on the Proposed Actions that require EA Amendment analysis

Figure 1.1 of the EA Amendment illustrates what a large area is being considered, and by inference the importance of any decision on transfer. Text of the draft suggests, tacitly in most cases, that the matter being considered is not very important! The eventual extent of the cleared land will affect life in all the surrounding lands and make the reservation less of a unique area. The pesky species found on cleared land will benefit. Will economic or other benefits outweigh this loss? The effective permanence of a land transfer places the decision in bold relief.

The desirability of the subject project is based in part on assumptions that:
(1) the site is surplus to DOE's future needs,
(2) CROET is eligible to receive priority for below-market land transfer from the DOE,

(3) the site will attract firms that will provide substantial employment and tax base increments,

(4) CROET will prosper sufficiently to enable it to carry out its environmental responsibilities under the land transfer agreement,

(5) the DOE will diligently enforce "deed restrictions" to protect the Natural Area as described in the EA Amendment, and

(6) future title transfers (from CROET) will include the same restrictions and be enforced.

The validity of each of these assumptions is in doubt, or at least the validity is not demonstrated in the EA Amendment. The last three seem important to this assessment and must be discussed. Assumption (3) is pertinent because, if little business locates in ED-1, the small benefit could not outweigh the stated environmental costs. [Data must exist on how frequently well executed industrial parks are unsuccessful.] Assumption (2) need not be discussed in this EA, but the reference to the transfer authority should be specific for an organization such as CROET. Assumption (1) appears to be outside an EA analysis, except for the possibility discussed in the next paragraph.

Energy sufficiency will remain a serious concern in our country, so energy research, development, and demonstration projects will continue to be placed on federal lands from time to time. Transfer of ED-1 may preclude a substantial federal project that otherwise would use this site. Unless ED-1 sales to business and industry are brisk, these businesses might produce less economic value than the federal project. Thus, the socioeconomic effect of the ED-1 transfer could in the end be negative! The DOE determination that the land is surplus was necessarily based on known or explicitly considered programmatic demands, while the projects that will seem imperative by 2020 are unknown now even to futurists. The alternative of leasing ED-1 to CROET for 99+ years should be considered in the EA.

The EA assumes that restrictions within the deed transferring ED-1 to CROET can assure long-term protection of the Natural Area now excluded from development. I believe this protection is illusory for the reasons below:

a. Long term, CROET or its successors cannot give priority to a function that may sometimes conflict with the economic development mission.

b. The costs of monitoring and protecting the 531-acre Natural Area will seem considerable when land sales are slow. The financial structure and prospects of CROET must be considered in the EA Amendment, and are much more important to the present issue than city or county finances. While current CROET management surely intends to fulfill any transfer agreement, the foundation of CROET in federal grants could place their future in jeopardy.

c. The Register of Deeds office does not enforce deed restrictions! DOE or successor agencies would have to enforce these restrictions consistently. This housekeeping responsibility is not likely to be given priority for long.

d. Should CROET demise, the efficacy of deed restrictions is further questioned. Following a second land transfer such restrictions have not generally proved effective. (Mary English, UT EERC, 1999)

Since deed restrictions cannot assure performance, DOE should pursue one of the following alternatives if the developable acreage is to be transferred:

a. DOE should retain at least the 531 acre Natural Area. [Why would CROET risk owning the East Fork Poplar Creek flood plain with the CERCLA liabilities that would occur if contamination from Y-12 is discovered there?] Preferably, DOE should further reduce negative impacts by retaining some or all of the land CROET has not yet disturbed.

b. Transfer the Natural Area to an agency or organization involved with land conservation or a related goal like wildlife management.

c. Make all land transfers to CROET with a reversion clause that would return the land to DOE or the successor agency if CROET should demise, not meet the restrictions on the natural area, or fail to carry out its stated goals. (for example, by proposing to sell ED-1 for a water park.)

The EA must recognize the limited effectiveness of deed restrictions and the environmental consequences of these limitations.]

My own perusal of the MAP for the transfer to CROET shows it is intended carefully to prevent significant adverse environmental impacts of the transfer. However, I believe experience over the country has shown that over time deed restrictions, easements, and similar instrument are often unenforceable. I therefore believe that following this plan would preclude issuance of a Finding of No Significant Impact for the transfer. Early implementation of transfer of the developable land requires another mechanism.

I believe using a reversion clause is the most reliable, next to substituting a 99+ year lease. Research on the effectiveness of reversion clauses is warranted.

Comment on EA details that require little analysis.

At the beginning of section 3.4.2 it is unclear what the initial water source for ED-1 would be, and the expected availability of this source until long -term connections can be completed to the city system.

In 3.4.3, a statement is needed about the expected future viability of the ETTP wastewater plant, since the connection to Oak Ridge municipal plant may be long delayed. Are industries that would require pretreatment of waste excluded from ED-1?

The EA Amendment in section 4 does not yet cover the environmental damage incident to the bridges over the creek. Will the MAP control such damage?

In section 5.1, discussions about Rarity Ridge, Rt. 58 expansion, and perhaps others need to be updated.

Section 5.2.3 treats employment impacts in a cavalier manner. The conclusion as stated is likely correct (growth rate within historical limits), but that is very small

comfort. Socioeconomic impacts were very large 1943-50. Better limit the historical period for the comparison.

Robert P. Zelle
483-8974

DAVID L. COFFEY

122 CALDWELL DRIVE OAK RIDGE, TENNESSEE 37830
TELEPHONE OR FAX 423-483-6487 E-MAIL: 76226.1622@COMPUSERVE.COM

June 17, 2002

Mr. David Allen, SE-30
U. S. Department of Energy
P. O. Box 2001
Oak Ridge, TN 37830-2001

Dear Mr. Allen:

I appreciate this opportunity to comment on the Environmental Assessment Addendum for Parcel ED-1.

Your actions toward transferring this parcel to the Community Reuse Organization of East Tennessee are very much in keeping with the intent of Congress to alleviate economic impacts from federal government downsizing in East Tennessee.

Toward that end, I believe it is important to minimize restrictions and the appearance that this property will be an ongoing environmental research laboratory. Certainly we have many hundreds of acres in the western Oak Ridge area already devoted to those activities.

From my own industry experience I feel strongly that any hint that this industrial site would be treated as an ORNL environmental study area would be reason enough for a prospect to search elsewhere.

This is not to suggest that environmental restrictions should be relaxed. There are adequate controls in law and regulations to assure respect for the land, water and air.

However, it would be absurd to meddle in the affairs of a prospect by specifying overly restrictive landscape and access limits. Rather, we should encourage the area to be developed as a park-like setting for responsible corporate citizens.

Parcel ED-1 has been thoroughly monitored throughout its development. I trust that you will do all that you can to allow it now to become a successful industrial site.

Sincerely,



David L. Coffey
CROET Chairman

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AMESQ

Log No. 66092

Date Received JUN 19 2002

File Code



Community Reuse Organization
of East Tennessee

107 Lea Way

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June 13, 2002

Mr. David Allen, SE-30
U.S. Department of Energy
P.O. Box 2001
Oak Ridge, Tennessee 37831-2001

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Log No. 65791

Date Received JUN 17 2002

File Code _____

Subject: Comments Regarding the Environmental Assessment Addendum for
Parcel ED-1

Dear Mr. Allen:

I have read with great interest the Environmental Assessment Addendum for
Parcel ED-1 and would like to make the following comments.

First and foremost, the site should be transferred to our organization as
expeditiously as possible and with as few constraints on its use as possible.
The community and surrounding region are dependent upon the development
of the park as a means of mitigating the ongoing reorganization and attendant
job loss within the Oak Ridge Federal complex.

Towards that end, the development areas should be provided with transferable
indemnification and should be transferred as a de-listed property under
Superfund designation.

We have done an exceptional job of maintaining and even enhancing the
environmental resources of the park while under our stewardship over the past
6 years. The existing Environmental Assessment for this parcel resulted in
monitoring efforts during this time, which have shown, during the most
intensive development period of the park, that there have been no adverse
impacts. This should indicate that we will continue to be exceptional stewards
and that continued long term monitoring is unnecessary.

The nearly 500 acres of natural area provides a significant buffer for any
threatened or endangered species and should preclude the necessity for
extensive on-going monitoring and inspections of these areas.

Mr. David Allen, SE-30

Comments Regarding the Environmental Assessment Addendum for Parcel ED-1

page 2 of 3

The required inspections are redundant and unnecessary and should be required only on an annual basis and should end after 3 years.

CROET should not be held accountable for natural succession within the natural or sensitive areas.

CROET should only be held accountable for any invasive species it is responsible for directly introducing.

The document is written in a manner that could be interpreted as prohibiting activity within the Natural area. Save for the sensitive areas, it should be made clear that there are no restrictions on crossings through the natural area, particularly for the purpose of developing necessary infrastructure extensions.

The prohibition on using non-native grasses for landscaping should be removed.

According to published reports, there are those who would suggest that the natural areas be transferred to an entity other than CROET. It is imperative that the parcel be transferred to CROET in its entirety. This is the only way in which CROET can provide any assurance that the integrity of the sensitive and natural areas will be maintained. Having any other entity control those areas without CROET's complete concurrence would result in a potentially confrontational and unworkable situation that would likely damage our ability to effectively market the developable lots and moreover, to control events within the natural area. As we are responsible, under the current EA and the proposed amended document, for mitigating these areas, should some unforeseen damage occur, having the areas in the control of others is simply unworkable.

We are particularly pleased that DOE has recognized our historic stewardship of this site and proposes that CROET oversee the continued protection of the environmental resources and that we do so without some arbitrary external over-site. As you know, CROET has an extremely inclusive board of directors of 42 individuals that represent collectively, virtually every stakeholder in the region. Our Board meetings are open to the public and there is an opportunity at these meetings for the public at large to comment on any issue relating to CROET. In addition, the meetings are regularly reported on by the news media. It is our intent to report the findings of the continued monitoring of the ecological resources to the Board annually. In this manner, all stakeholders in the region and indeed, nationally, will have either representational or direct access to our ongoing activities.

Lastly, perhaps more than anyone, we recognize the value of the natural area from a ecological and marketability perspective. We have demonstrated our ability and willingness to protect important environmental resources while simultaneously developing a seemingly incongruent adjacent land use. We have done so because it is the right thing to do and because it was a good

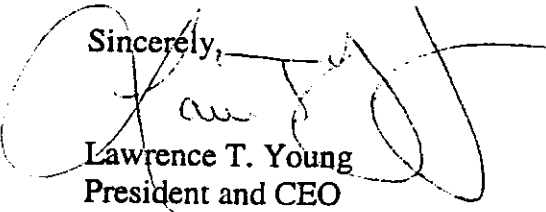
Mr. David Allen, SE-30

Comments Regarding the Environmental Assessment Addendum for Parcel ED-1
page 3 of 3

business decision. The natural area is a key component of our ability to sell the park's developed property to targeted upscale businesses that place high value on aesthetic features such as the stream, the hardwoods and even the fauna. To not protect this resource would be folly.

Thank you for the opportunity of commenting on an item critical to the future of Oak Ridge and our organization.

Sincerely,



Lawrence T. Young
President and CEO

Advocates for the Oak Ridge Reservation

112 Newcrest Lane
Oak Ridge, Tennessee 37830

June 9, 2002

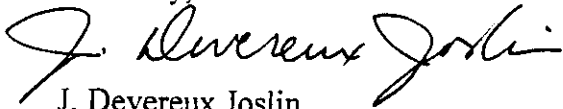
Mr. David Allen
United States Department of Energy
Oak Ridge Operations Office
200 Administration Road
P.O. Box 2001
Oak Ridge, Tennessee 37831

Dear Mr. Allen:

The Advocates for the Oak Ridge Reservation (AFORR) are pleased to offer the enclosed comments to the U. S. Department of Energy concerning the proposed transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee.

The enclosed comments are our combined reactions to both the EA Addendum and the corresponding Mitigation Action Plan, entitled, "National Environmental Policy Act Environmental Assessment Addendum and Mitigation Action Plan for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee."

Sincerely,



J. Devereux Joslin

President

Advocates for the Oak Ridge Reservation
112 Newcrest Lane
Oak Ridge, TN 37830

Enclosure

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Log No. 64904
Date Received JUN 11 2002
File Code _____

Comments on DOE/EA-1113-A Draft May 2002
"Environmental Assessment Addendum and Mitigation Action Plan
for the Proposed Transfer of Parcel ED-1 to the Community Reuse
Organization of East Tennessee"

1. DOE needs to provide an effective mechanism for protecting the exclusion zone.

AFORR's primary concern with this assessment stems from the total absence of specificity in the report concerning how protection will be achieved for the existing "Natural Area" or "Exclusion Zone" mandated in the original Mitigation Action Plan. The current addendum simply states, "Conditions of the deed and transfer agreement would ensure that CROET continued to provide protection..." But the assessment never states how this will be accomplished.

We infer (from the text of the draft EA Addendum and draft revised MAP) that DOE intends to institute a deed restriction to prohibit future owners from encroaching upon the Exclusion Zone. We have serious concerns about this approach. A deed restriction is not an effective mechanism to accomplish the objective of permanent protection. Deed restrictions generally can be enforced only by the seller (i.e., DOE) taking the property back. No one else can enforce the restriction, and there are no less momentous mechanisms of enforcement. We think that it would be cumbersome for DOE to continue to monitor the situation for violations and we think that DOE would be unlikely to have the will or the resources to act to reclaim the property, particularly if it was necessary to compensate the owner for the current commercial value of the land and improvements, particularly if the violation is not one of major proportions. A deed restriction would not be an effective mechanism for protecting the area.

RECOMMENDATION:

AFORR's primary concern with this proposed action is the need for an effective mechanism to ensure protection for the existing "Natural Area" or "Exclusion Zone," mandated in the original Finding of No Significant Impact (FONSI) and Mitigation Action Plan (MAP) as one of the main mitigation measures necessary for the FONSI.

The most effective immediate alternative would be retention of ownership by DOE, with the establishment of a Conservation Easement over the Exclusion Zone, with monitoring and management to be conducted under an appropriate arrangement.

Eventually, DOE could choose to transfer the entire Natural Area to an agency or organization that is equipped to manage it for conservation purposes. This is only fitting since conservation of natural and cultural resources was the original reason for setting up this zone in the original NEPA document (see 10 CFR 1021.331).

2. DOE needs to provide enforceable mechanism to ensure that private owners will fulfill their obligations to meet mitigation commitments

In addition to ensuring that development does not encroach on the Exclusion Zone, AFORR is concerned about the need for an enforceable mechanism to ensure that CROET or its successors fulfill their obligations for environmental monitoring and other

management actions required under the FONSI and MAP. The FONSI was conditioned on continued monitoring and other continuing actions to protect site streams and other natural resources, and AFORR believes that the FONSI requires that DOE establish a mechanism to ensure that these actions are carried out. For example, the landowner could be required to post a bond to ensure its future performance.

3. **Monitoring done to date should not be represented as "Post-Development," and monitoring should be required to continue until development is complete.**

We find the representation of the currently presented monitoring data as a "Summary of Pre- and Post-Development Monitoring (1996-2000)" (Page 5) to be misleading. The goals of The Mitigation Action Plan were "pre- and post-construction assessment of natural succession and impacts of development on natural communities and populations using data collected during monitoring,"

It is clear from the description of construction activities that have taken place to date (see text and Fig 1.2.) that less than 85 acres of the 426 acres designated for developed have been disturbed. Since only about 20 to 25% of the area has been disturbed in the initial 6 years since the site was established, it is clear that any monitoring data collected so far has very little meaning with regard to evaluating the impact of development.

RECOMMENDATION:

To meet the mitigation requirements in the original FONSI and MAP, DOE must ensure a continuing commitment to monitoring during the remainder of the development process and after development is complete. The MAP should spell out clearly what the commitment to future monitoring will be. The purpose of monitoring is (a) to determine the impact of development on natural resources and (b) to determine if future mitigative action will be needed. Clearly, final determinations on these points this cannot be made until after construction activity is completed, but the current MAP does not provide for this to be done.

4. **DOE needs to establish accountability for future monitoring and mitigation by CROET**

The section on page 12, "4. Map Review and Reporting Requirements," clearly spells out when CROET will review the MAP. But this requirement specifies virtually no real actions that must occur at these times. The description even admits that "review could be nothing more than re-reading the MAP to determine if changes are necessary." In fact, there seem to be no requirements in this portion of the plan at all that demand serious accountability.

There is at the bottom of page 12 mention of an "optional" Peer Review Panel, which CROET has complete discretion concerning its establishment. The current

suggested make-up is entirely of governmental agencies, that may or may not have any vested interest in seeing that natural and cultural resources be fully protected.

The CROET lacks institutional expertise on conservation. It operates as a private entity without representative public involvement or oversight, and it has failed in the past to follow some mitigation requirements. Two examples of CROET's failings are the unilateral termination of monitoring after 2000 and the planting of tall fescue, listed as an invasive exotic species in Tennessee, instead of alternative grasses specified in the MAP. Therefore, it is imperative that external review and oversight of mitigation be made a mandatory condition of the transfer, not an optional item..

RECOMMENDATION:

AFORR is concerned that the requirements for MAP review and follow-up are vague and that there are no provisions to assure that CROET fulfills its obligations to mitigation. Requirements for monitoring, review, and follow-up should be made explicit and should include external oversight. We recommend that MAP review and reporting requirements be clearly spelled out. Further, oversight of CROET in MAP Review and Report should be a stated requirement in this document. Finally, this panel should allow for citizen input, especially from representatives of non-governmental organizations that are concerned about natural and cultural resources.

5. **The EA and MAP do not acknowledge or address the adverse environmental impacts of developing 'Development Area 4' of Parcel ED-1. This omission must be corrected, and we recommend that this area be excluded from the proposed transfer and from development under the existing lease.**

"Development Area 4," at the extreme southwest end of Parcel ED-1 (identified in Figure 1.1 of the MAP) is isolated from the rest of ED-1 and separated from the rest of the development by East Fork Poplar Creek and Exclusion Zone areas. The EA does not discuss either how road and utility access could be established to this area or the environmental impacts of such infrastructure development, and the MAP does not discuss measures to mitigate these impacts.

AFORR is concerned that the development of this 45-acre tract could have environmental costs in excess of any economic benefits. We see three possible ways to develop access to this parcel: (1) cut yet another roadway through the Exclusion Zone and build yet another bridge across East Fork Poplar Creek and through its floodplain, (2) develop an access corridor from Blair Road on the southwest, crossing the Tennessee Valley Authority (TVA) property and Poplar Creek. or (3) convert the existing one-lane gravel access road (currently open to the public as a portion of the Oak Ridge North Boundary Greenway Trail) that winds through the Oak Ridge Reservation between McKinney Ridge and East Fork Poplar Creek into a highway.

All of these access methods would have significant environmental and economic costs. Option 1, a new bridge, would be expensive and would further fragment the

Natural Area, which has already been fragmented by two other 4-lane roadways and bridges. Construction would cause additional disturbance to the forested area along the creek in the Natural Area and to the waters of the creek. The second option, developing an access corridor across TVA property and Poplar Creek, would require an even larger bridge than the first option, and would require TVA's cooperation.

Option 3, widening and paving the gravel road, would also result in significant fragmentation, by separating the entire Natural Area along the creek from the hundreds of undisturbed acres on McKinney Ridge. The convergence of this Natural Area and McKinney Ridge currently supports the breeding of a number of bird species of conservation concern, according to breeding bird surveys conducted by Partners and Flight and the Tennessee Wildlife Research Agency Partners in Flight along this trail over the past seven years. The area immediately adjacent to this particular portion of the trail has year after year been demonstrated to contain breeding grounds for no less than six bird species that are on Partners in Flight National Watch List—Cerulean Warbler (*Dendroica cerulea*), Wood Thrush (*Hylocichla mustelina*), Kentucky Warbler (*Oporornis formosus*), Prairie Warbler (*Dendroica discolor*), Blue-winged Warbler (*Vermivora pinus*), and Prothonotary Warbler (*Protonaria citrea*). Concern for the Cerulean Warbler is particularly high nationwide (see 6. below). Furthermore, disturbance of this trail would lead to the loss of additional Oak Ridge Reservation land and a popular section of the 6-mile North Boundary Greenway trail, used for hiking, bicycling, birdwatching, and other recreation.

RECOMMENDATION:

DOE should revise the EA to address the impacts of developing access to Development Area 4, in view of new information that has surfaced, and new decisions that have been made, since the original ED-1 EA. Furthermore, in view of the magnitude of the environmental impacts that we expect to be associated with developing this area, we ask that (1) this area and adjacent exclusion areas be excluded from the proposed transfer action and (2) the MAP be amended to exclude this area from development under the existing lease with CROET.

- 6. DOE should revise the EA to acknowledge the presence of the Cerulean Warbler on Parcel ED-1 and should revise the Mitigation Action Plan to prevent adverse impacts to this species.**

Among the purposes of the Addendum are to “2. Determine if changes to the MAP are warranted...” and “3...defining when mitigation is necessary.” One piece of information—that is not mentioned in the original MAP six years ago nor in either document here—is the well-documented presence of the Cerulean Warbler on the edge and within the ED-1 Exclusion Zone for four years in a row during the breeding season. This species is already state-listed as “In Need of Management,” and upgrading its state status to “threatened” is being reviewed by the Tennessee Wildlife Resources Agency. Its status is currently being reviewed by the U. S. Fish and Wildlife Service to determine whether it needs to be federally-listed (Steven Alexander, U.S. Fish and Wildlife Service, Cookeville, TN, personal communication).

The presence of this species has not been recorded on the bird monitoring point counts conducted under contract to CROET within the routes established through the Exclusion Zone, and hence was not mentioned in this Addendum. However, additional highly pertinent data exists that has not been reported here. This species has been recorded at the identical location on the edge of, and within, the Exclusion Zone on the North Boundary Greenway trail in the vicinity of East Fork of Poplar Creek (Knight, 1999, Knight, 2000, TWRA, 2001; Robert and Leigh Loveday and J. D. Joslin, 2002, personal communication-see REFERENCES CITED for details). Such "site fidelity" by this species for four years in a row is indicative that this species is breeding along this greenway trail on the edge of the exclusion zone.

Any attempt to widen, pave, and/or increase vehicular traffic on this greenway trail to provide access to Parcel 4 of the ED-1 area would surely disturb and harass this species to the point of interfering with breeding. It would also further fragment this area, making this species much more vulnerable to Brown-headed Cowbird parasitism, to which is known to be susceptible.

In this context, it should be noted that the recent Executive Order pertaining to the International Migratory Bird Treaty Act (E.O. 13186, published in the Federal Register January 17, 2001) instructs all federal agencies to take reasonable actions to minimize impacts on migratory birds. The order also instructs all federal agencies to establish MOUs with the U.S. Fish & Wildlife Service to achieve this goal. Most specifically, the U. S. Fish & Wildlife Service has determined that bird species included in Partners in Flight's Birds of Conservation Concern 2001 Report be deemed priorities for conservation actions by all federal agencies. Furthermore, these lists will be consulted prior to any actions taken on federal lands that may impact migratory bird habitat.

The Cerulean Warbler, along with 5 other species mentioned above in item (5), is considered by the USFWS as a "Species of Management Concern." Hence special efforts should be taken to avoid incidental federal actions that might result in the take of this and these other five species.

RECOMMENDATION:

The presence of breeding Cerulean Warblers—a state-listed species, and one being currently considered for federal listing— was not considered in the original MAP, nor has it been mentioned in this Addendum. This species has been present for four consecutive breeding seasons adjacent to the Natural Area and along the most probable access pathway to Parcel 4. Its presence further argues for altering the MAP to exclude the 45-acre Parcel 4 from development and to include it as part of the Natural Area.

Page-specific Comments

EA Addendum, page 8, lines 12-14. Is the study cited here the report known as the "Fluor Daniel study"? A reference citation should be provided.

EA Addendum, Section 3.1, page 8, lines 31-42. In addition to the land use changes mentioned here, this "Land Use" section should mention the designation of the North Boundary Greenway adjacent to Parcel ED-1.

EA Addendum, Section 3.4, pages 10-11. This section describes various utility upgrades "planned" by CROET, the city, or other entities. As local residents, we are aware that some of these "plans" are not yet budgeted by anyone, and probably could be called "long-range intentions" or "dreams." To help DOE decisionmakers and the public differentiate actual commitments to development from intentions that are contingent on other actions (such as CROET's hopes of obtaining additional DOE land for development in the future), please indicate who "plans" each of the upgrades that are mentioned and identify the source of the information. (Comment specifically applies to lines 24-25 on page 10, lines 6-7 on page 11, lines 13-15 on page 11, and lines 23-24 on page 11.)

MAP - Section 3.1.3. Page 11, paragraph 3 in section. It has been our understanding that the Horizon Center covenants require (not merely recommend) the use of native plants in landscaping. This is important for effective mitigation of ecological impacts. Therefore, revise the MAP to indicate that this is a requirement, not a recommendation.

MAP - Section 3.1.3. Page 11, paragraph 4 in section (next to last paragraph on page). We have observed that tall fescue, identified as an invasive pest plant species in Tennessee, has been planted in lawn areas of the Horizon Center in violation of mitigation requirements. In addition to stating that annual rye grass and clover should be used in revegetating construction sites, the MAP should specify that tall fescue is not to be planted in the future.

MAP - Section 3.1.3. Page 11, paragraph 5 in section (last paragraph on page). It appears that the only restorative action CROET would be required to take to protect the ecological/botanical integrity of the Natural Area would be to try to remove exotic/invasive plants encroaching on the sites of sensitive plant species. This is hardly sufficient to meet the objectives of the MAP. To be effective in protecting the integrity of the Natural Area, incursion and spread of exotic/invasive plants should be controlled throughout the Natural Area, not just in the vicinity of a few protected species.

REFERENCES CITED

- Knight, R. L. 1999. The season report. *The Migrant* (A Quarterly Journal of Ornithology published by The Tennessee Ornithological Society):70:133.
- Knight, R. L. 2000. The season report. *The Migrant* 71:122.
- T.W.R.A. 2001 (Tennessee Wildlife Resources Agency). Partners in Flight Breeding Bird Survey for the Oak Ridge Reservation, May-June, 2001. Nashville, Tennessee.
- Robert and Leigh Loveday and J. D. Joslin, 2002. Details: J.D. Joslin saw and heard an adult male Cerulean Warbler singing at approximately 9 a.m., May 27, on the North Boundary Trail of the Oak Ridge Reservation, approximately 100 m from East Fork Poplar Creek on the boundary of the MAP Exclusion Zone for Parcel ED-1. Robert and Leigh Loveday separately heard the same species singing on the same trail at

approximately noon of the same day (May 27). J. D. Joslin again saw and heard an adult male Cerulean Warbler at approximately 10:30 am, June 2, about 80 yards from the previous sighting on the same trail at the Exclusion Zone boundary and 20 yards from East Fork Poplar Creek. All sightings were reported on the Tennessee Birdwatchers Internet list-serve (tn-birds@freelist.com). (Partners in Flight, and most breeding surveys, consider that male birds singing during the period from May 20 to July 1 represent likely breeding birds marking a territory.)



31 May 2002

Mr. David R. Allen
ORO NEPA Compliance Officer
Department of Energy
Oak Ridge National Laboratory
P. O. Box 2001
Oak Ridge, TN 37831

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Leg No. 64216
Date Received JUN 7 2002
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Dear David,

Comments on DOE/EA-1113-A Draft May 2002

"Environmental Assessment Addendum for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee and A Mitigation Action Plan for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee"

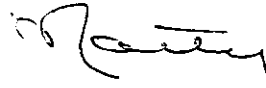
Given DOE's recent history of natural resource protection in regard to real estate transactions, TCL recommends the following:

1. Developing an effective third-party means to ensure protection of the natural resource values set aside in the previous FONSI, active management of the exclusion zone, monitoring mandated mitigation for the addendum, and on-going monitoring requirements. TCL recommends:
 - transferring ownership of the exclusion zone to the state (TWRA), a Federal natural resource agency, or an NGO;
 - establishing a third party agreement for oversight of mitigation and monitoring requirements with the same organization,
 - providing this organization an endowment sufficient to cover their annual cost for services, and
 - having CROET or the landowners establish a performance bond until development has been completed.
2. Change "Post-Development" monitoring standards to pre-development for those sites not already developed at ED-1.

3. Mitigate adverse environmental impacts to "Development Area 4" of Parcel ED-1.
4. Analyze impacts to Cerulean Warblers and alter the addendum accordingly.
5. Mitigate cumulative impacts.

Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Marty Marina", written in a cursive style.

Marty Marina
Executive Director

Joseph A. Lenhard
125 Newell Lane
Oak Ridge, Tennessee 37830
May 23, 2002

Mr. David Allen, SE-30
U.S. Department of Energy
P.O. Box 2001
Oak Ridge, Tennessee 37831-2001

Subject: Comments Regarding the Environmental Assessment Addendum for Parcel ED-1

Dear Mr. Allen:

I have read with great interest the Environmental Assessment Addendum for Parcel ED-1 and would like to make the following comments.

The site should be transferred to the Community Reuse Organization of East Tennessee (CROET) as quickly as possible and with as few restrictions as possible.

The development of ED-1, the related environmental issues and this transfer have been well publicized to a broad and diverse audience. Therefore, the 15 day review period, which meets all legal requirements, is more than adequate. The DOE effort for expeditious transfer of the property with adequate review should be applauded.

The existing Environmental Assessment for this parcel resulted in monitoring efforts over the last 5 years, during the most intensive development period of the park, and those efforts have shown zero adverse impacts. This should indicate that continued long term monitoring is unnecessary.

The nearly 500 acres of natural area provides a significant buffer for any threatened or endangered species and should preclude the necessity for extensive on-going monitoring and inspections of these areas.

CROET should only be held accountable for any invasive species it is responsible for directly introducing.

The document is written in a manner that could be interpreted as prohibiting activity within the Natural Area. This could be very troublesome since portions of the DOE patrol and access roads and bridges lie in the Natural Area and these require frequent entry and periodic maintenance. As

Mr. David Allen

Comments Regarding the Environmental Assessment Addendum for Parcel ED-1

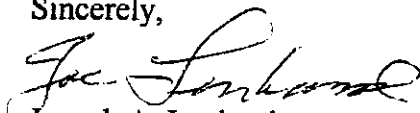
a note of interest, the Horizon Center utility systems and roads already go through the Natural Area. I would suggest that the following language be placed in the document: "When activity is required in the natural area to maintain or extend roads, bridges and utility systems, CROET will assure that these activities are performed in a manner with minimal impact on the environment."

The prohibition on using non-native grasses for landscaping is ridiculous given the current existence of non-native species throughout the immediate area and the region. One only needs to look at the former K-25 site, the adjacent State highway right-of-ways and the nearby residential developments to see that this is an attempt to bar the door after the horse has left the barn. This prohibition and the requirement that "Lawn areas will also be kept to a minimum" should be removed.

I am troubled that the extensive requirements for environmental monitoring may be interpreted by CROET clients (i.e. private sector companies) that they will be responsible after flow-down for many of these requirements. It should be made clear that these are requirements placed on CROET, not their clients. Furthermore, I am concerned that these requirements muddle the focus of the CROET. The mission of the CROET is to bring in new companies and jobs to the region. The requirements within the Addendum seem to require that CROET become an environmental research organization. If taken to an extreme, the requirements regarding environmental monitoring and stewardship could make the mission of CROET impossible. Therefore, I would strongly recommend that all requirements that are not absolutely essential to the maintenance of the few threatened or endangered species on the site be removed.

Thank you for the opportunity of commenting on this most important issue.

Sincerely,



Joseph A. Lenhard

Perry, Walter N

From: Josh Johnson [JOSHJOHNSON@prodigy.net]
Sent: Thursday, May 30, 2002 12:52 AM
To: NEPA (Stakeholders comments mailbox)
Subject: Transfer of ED-1

918 West Outer Dr
 Oak Ridge, TN 37830
 (865)-483-5152
joshjohnson@prodigy.net
 30 May 2002

Mr David R. Allen
 U.S. Department of Energy
 SE-30-1
 P.O. Box 2001
 Oak Ridge, TN 37831

NEPA@oro.doe.gov

Subject: Comments on Mitigation Action Plan for the Proposed
 Transfer of Parcel ED-1 to the Community Reuse
 Organization of East Tennessee (CROET), Draft,
 DOE/EA-1113-A, May 2002

and

Environmental-Assessment Addendum for the Proposed
 Transfer of Parcel ED-1 to the Community Reuse Organization
 East Tennessee, Draft, DOE/EA-1113-A, May 2002.

Dear Mr Allen:

I shall state my conclusions at the start, to avoid confusion between them and the rationale.

1. I agree that, to accomplish the objective of attracting industry to ED-1, ability to give deeds to the land will be helpful.

2. I do not believe the land should be transferred to CROET to accomplish this. The objective can be as readily attained under City ownership, with CROET managing the Horizon Park under its 38-year lease. If an attractive industry wanted to locate in ED-1 and to own rather than sub-lease its land, I find it difficult to imagine that City Council would reject a request by CROET to sell. I believe DOE should release the land only to the City, in spite of the precipitous waiver of self-sufficiency rights, with negligible prior notice or public input, by Council at its meeting 6 May 2002.

Starting from where we are today, the above actions seem best. It would have been preferable to carry out an Environmental Impact study for the whole Oak Ridge Reservation before the release

6/4/02

of green field property, rather than an Environmental Assessment, culminating in a questionable FONSI. However, the conclusion that an industrial park was a rational need of the city and that the ED-1 tract (not necessarily including EDI-2 and ED-3) was the most suitable location for it would likely have been the same. However, the role of CROET needs examination.

In the excerpt from the Federal Register, Vol 65, p. 10686, provided with the drafts, section 2 states that "Membership in a CRO is composed of a broad representation of persons and entities from the affected communities" and later "they can assure a broad range of participation in community transition activities." Community Reuse Organizations at other sites may meet this description, but CROET in the opinion of many of us is not characterized by the adjective "broad." I do not question the good intentions and prominence in the community of members of the Board, but it is dominated by individuals focused on economic development, largely oblivious to other values the Reservation may have, for example, for environmental research.

It has organized itself in an array of limited liability corporations for various activities. These are walled off from control of CROET, in order to shield the parent from law suits for any of their actions. They are apparently self-perpetuating, in that their boards fill any vacancies. This description may be inaccurate, but CROET has disclosed nothing to contradict it.

There appears to be no provision for oversight or auditing of CROET or the LLCs by the city or DOE. In waiving prior claim to purchase of the land via self-sufficiency, Council has surrendered its most important leverage for public input into the important activities of attracting industry and of promoting economic growth.

It has further given up participation in proceeds from sales. On page 6 of the Addendum, it is disclosed that CROET has spent about \$14 million of public funds on infrastructure of the Horizon Park, or about \$33,000 per acre developable for industry. This has come from the City, State, and DOE, through its funding of CROET. As it stands, any money from property sales will accrue to CROET, with no restriction on what it does with it, outside the generic restrictions on not-for-profit organizations. Even with the recognition that attraction of industry will probably require subsidy, likely involving pricing of land below fair-market value, the City is foregoing a substantial asset.

In summary, I feel the objectives of self-sufficiency and the public interest are best served by city ownership of any transferred land, with day-to-day management by CROET or such other instrumentality the City designates, within the limits allowed by existing leases.

Respectfully,

James S. Johnson, Jr.



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DOE OVERSIGHT DIVISION
761 EMORY VALLEY ROAD
OAK RIDGE, TENNESSEE 37830-7072

June 12, 2002

David R. Allen
NEPA Compliance Officer
DOE Oak Ridge Operations
PO Box 2001, SE-32
Oak Ridge, TN 37831-8739

Dear Mr. Allen

National Environmental Policy Act Environmental Assessment Addendum and Mitigation Action Plan for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee (CROET)

The Tennessee Department of Environment and Conservation, DOE Oversight Division has reviewed the subject document in accordance with the requirements of the National Environmental Policy Act and associated regulations of 40 CFR 1500-1505 and 10 CFR 1021 as implemented.

General Comments

The Data Summary presented in pages 5 and 6 of the Mitigation Action Plan (MAP) referring to the previous MAP indicates that the monitoring activities by the Department of Energy (DOE) and its contractors have progressively decreased since 1997. This indicates a failure to meet the minimum monitoring mitigation efforts required in the previous MAP. In a letter dated February 12, 2002 to DOE, the state expressed concern regarding DOE's seeming lack of commitment to comply with the implementation of the previous MAP and requested that DOE fully and clearly address its position on the execution of the mitigation activities as outlined in the "*Environmental Assessment (DOE/EA-1113), Finding Of No Significant Impact (FONSI).*"

The Lower East Fork Poplar Creek (LEFPC) Floodplain Soils Remedial Action project only addressed mercury contaminated soils within the 100 year floodplain. Because of continuing releases of mercury into LEFPC from the Y-12 Plant, surface water and sediment issues for LEFPC were to be addressed as part of the DOE Y-12 Plant Environmental Restoration Program. Although steps have been taken at Y-12 to reduce mercury discharges into the creek, no CERCLA decision has been made concerning the LEFPC surface water and sediments. Therefore, this EA should address DOE's plans to insure proper activities are completed in accordance with Section 120 (H) of CERCLA prior to transfer of properties from the Oak Ridge National Priority List (NPL) site.

Specific Comments

Section 3.4.2 Water Supply: The reference to the proposed water storage tank should be more specific regarding the future water needs for the site. Discuss alternative plans for the future development of the site, which is dependent upon the completion of the cities "looped" service, if this "looped" service is not implemented.

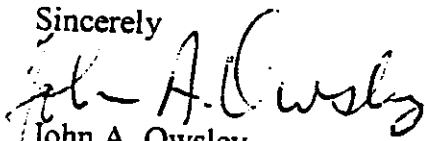
Section 4.1 Threatened and Endangered Species: The implication that construction activities on the site were the cause of the decline in Tennessee Dace in Dace Branch is speculation at best. There has been continued decline of population numbers over the years since the end of construction indicating that there may be other causal factors involved. Continued monitoring at this point is needed to further evaluate the condition of this fish population. If current sampling indicates that the population has been further affected, DOE should implement whatever action plan is necessary to mitigate impacts.

Section 4.2 Cultural Resources: Line 30: "....these sites would continue to be periodically inspected...." DOE should be specific on how to implement the inspection.

MAP Document Page 3, Figure 1.1: The coverage of the Threatened and Endangered species appears to be incomplete. There are omissions of formerly identified (see references below) cultural resources on the map (Page 3, Fig. 1.1) in the MAP document. These omissions include cultural resource site numbers: 950A, 953A, 935A, 953B/C, 954A, and 975A/B. References: (1) An Evaluation of Previously Recorded and Inventoried Archaeological Sites on the ORR, Anderson & Roane Counties, Tennessee, ORNL/M-4946, DuVall, Glyn D. and Sousa, Peter A., 1996. (2) Historic Sites Reconnaissance of the Oak Ridge Reservation, Oak Ridge, Tennessee, ORNL/TM-5811, Fielder, George F., et al, April 1977.

If you have any questions concerning the above questions, please contact me at (865) 481-0995.

Sincerely


John A. Owsley
Director

xc: Dodd Galbreath, TDEC
Reggie Reeves, TDEC
Robert Brown, DOE
Margaret Morrow, DOE
Steven Alexander, FWS
Lawrence Young, CROET

WestGate Lodging
101 Gates Drive
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Date Received JUN 17 2002

File Code _____

June 13, 2002

Mr. David Allen, SE-30
U.S. Department of Energy
P.O. Box 2001
Oak Ridge, Tennessee 37831-2001

Subject: Comments Regarding the Environmental Assessment Addendum for Parcel ED-1

Dear Mr. Allen:

I have read with great interest the Environmental Assessment Addendum for Parcel ED-1 and I appreciate this opportunity to share some thoughts on this issue.

Parcel ED-1 is a site that is critical to this community as we try to turn the corner from a "Government Town" to a city with a more diverse employment base that is needed to stabilize our local economy. It is extremely important to Oak Ridge and this region that this site be transferred to the Community Reuse Organization of East Tennessee (CROET) as quickly as possible and with as few restrictions as possible.

I am fully aware that the site includes several areas that are environmentally and/or historically sensitive. I am a lifetime resident of this area and one that is very concerned that these important sites be properly managed and preserved for future generations to enjoy.

With preservation and proper stewardship in mind, I can't imagine a better organization to provide this oversight than the CROET organization. As you are aware, a Board of approximately 40 volunteers representing very diverse backgrounds manages the CROET organization. I am a member of this Board and am personally acquainted with all of them. I am sure that no one could question the integrity of this group or substantiate any claims of narrow or fixed agendas that may conflict with DOE or community concerns for this site.

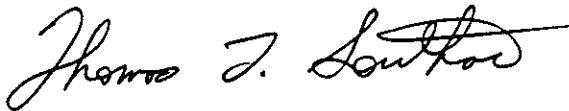
The mission of the CROET is to bring in new companies to the region so that jobs can be created. The requirements within the Addendum seem to require that CROET become an environmental research organization. If taken to an extreme, the requirements regarding environmental monitoring and stewardship might make the real mission of CROET not only problematic but also potentially impossible. As such, I would recommend that all requirements that are not absolutely essential to the maintenance of the few threatened or endangered species on the site be removed.

I think it is also important to point out that even after the transfer of this site is concluded, the Federal government will continue to be the largest property owner in Oak Ridge, owning over 50 per cent on the

acreage in Oak Ridge.

Thank you for the opportunity of commenting on this most important issue.

Sincerely,

A handwritten signature in cursive script, reading "Thomas L. Southard". The signature is fluid and elegant, with a prominent initial "T" and a long, sweeping underline.

Thomas L. Southard
WestGate Lodging
Owner

L. O. Rabinowitz
□ Personnel Technology Group, Inc.
PO Box 4128
Oak Ridge, TN 37831

June 11, 2002

Mr. David Allen, SE-30
US Department of Energy
PO Box 2001
Oak Ridge, TN 37831-2001

Dear Mr. Allen:

I am sending this transmittal as a means of commenting on the Environmental Assessment Addendum for Parcel ED-1.

As a member of the Board of Horizon Center, LLC, I share the Department of Energy's desire to balance environmental stewardship with the important development efforts that are taking place at the site. Clearly, the Community Reuse Organization of East Tennessee (CROET) has done an exemplary job of meeting its responsibilities in both of these areas.

The site preparation and development that has taken place to date includes the most significant work that is likely to take place. Thousands of tons of dirt have been moved and much of the park's infrastructure has been placed. All the while, monitoring over the past five years has shown that those areas that have been designated as sensitive at ED-1 have not been negatively affected. I understand that the site will be inspected annually for the next three years. Given the superior results obtained so far, the covenants that will govern park tenants, and the 500 acres designated as a protected natural area, the three annual inspections should be sufficient in ensuring that the parcel will continue to be environmentally robust, and further annual inspections will be unnecessary.

I'm proud of the significant progress that CROET has made in development of Parcel ED-1. CROET has done this with sensitivity to the natural environment that enhances the appeal of the site. However, it is time that CROET put more of its efforts into other vital activities—such as successfully recruiting new businesses—that will ensure the success of its mission. In order to do so, there are a number of items that must be addressed:

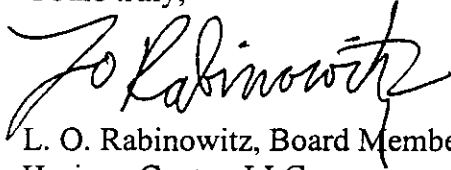
1. The transfer of the ED-1 site should be made to CROET as soon as possible to maximize economic development opportunities that will benefit the area.
2. Development areas should be de-listed property under Superfund designation. Furthermore, these areas should be provided with transferable indemnification.
3. The environmental assessment is written in such a way as to prohibit *all* activity within the natural area. This should be revised to allow crossings in non-sensitive natural areas for such mission critical activities as developing infrastructure extensions.

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4. CROET (and not CROET's clients) should be responsible for any future or ongoing environmental monitoring. To encumber clients with this responsibility will put a chilling effect on recruitment efforts.

Thank you for your time and consideration. I appreciate your efforts in helping the area achieve economic viability through your support of progressive programs such as those being advanced by CROET.

Yours truly,

A handwritten signature in black ink, appearing to read "L. O. Rabinowitz", written in a cursive style.

L. O. Rabinowitz, Board Member
Horizon Center, LLC



United States Department of the Interior

FISH AND WILDLIFE SERVICE

446 Neal Street
Cookeville, TN 38501

June 6, 2002

Mr. David Allen
U.S. Department of Energy
Oak Ridge Operations Office
200 Administration Road
Oak Ridge, Tennessee 37831

✓ Dr. James L. Elmore
U.S. Department of Energy
Oak Ridge Operations Office
P.O. Box 2001
Oak Ridge, Tennessee 37831

Dear Mr. Allen and Dr. Elmore:

Thank you for your letter and enclosures received April 23, 2002, regarding informal consultation under Section 7 of the Endangered Species Act for the proposed transfer of Parcel ED-1 of the Oak Ridge Reservation (ORR) to the Community Reuse Organization of East Tennessee (CROET). The U.S. Fish and Wildlife Service (Service) Tennessee/Kentucky Field Office also received the National Environmental Policy Act (NEPA) Environmental Assessment (EA) addendum and mitigation action plan (MAP) for the proposed transfer on May 20, 2002. This addendum to the EA was finalized prior to consideration and incorporation of Service comments on the request for informal consultation. The public comment period for this addendum was extended to June 14, 2002, after significant public opposition to the originally proposed 15-day review period. This addendum to the EA considers the continued development of approximately 426 acres within the remaining 957-acre Parcel ED-1. CROET would be responsible for the protection of wildlife habitat, plant communities, threatened and endangered species, water resources, wetlands, and historic and archaeological resources within the exclusion zone, now referred to as the "Natural Area." The title transfer is being conducted under Section 161(g) of the Atomic Energy Act of 1954 and a Department of Energy (DOE)-issued interim final rule, "Transfer of Real Property at Defense Nuclear Facilities for Economic Development" (10 CFR Part 770). This rule became effective on February 29, 2000. Service personnel have reviewed the information submitted and offer the following comments for consideration.

ORIGINALLY LOGGED

On July 25, 1995, the Department of Energy (DOE) requested information from the Service regarding Federally threatened and endangered species which may be present on a 1,000-acre area designated as Parcel ED-1. The Service concurrently received a copy of correspondence from Oak Ridge National Laboratory (ORNL) to the Tennessee Wildlife Resources Agency (TWRA) which detailed the current knowledge of protected species distribution within Parcel ED-1. On August 15, 1995, Service personnel responded to the DOE request with information regarding the potential presence of the Federally endangered gray bat (*Myotis grisescens*), the Federally threatened Virginia spiraea (*Spiraea virginiana*), and four status review (candidate) species. At the time of the initial request from DOE, the Service was provided with relevant information obtained from surveys conducted on the ED-1 parcel by ORNL staff and independent researchers contracted by DOE regarding the adequacy of surveys for the gray bat conducted on parcel ED-1. Suitable foraging habitat for the gray bat and the Federally endangered Rafinesque's big-eared bat (*Corynorhinus rafinesquii*) was identified. Suitable summer roosting habitat for the Federally endangered Indiana bat (*Myotis sodalis*) was also identified within the floodplain of East Fork Poplar Creek. On September 6, 1995, DOE submitted a Biological Assessment (BA) for the species identified. Although there is a documented cave within the boundaries of Parcel ED-1, this information was not included in the BA and this office has never received pertinent survey data from this location. On October 4, 1995, the Service concurred with DOE's conclusion that the proposed lease of Parcel ED-1 would not adversely impact Federally listed protected species and/or habitat. We regret that our concurrence was granted without the opportunity to review the specific bat surveys conducted in 1992 by ORNL staff and researchers at Tennessee Technological University (TTU) within the East Fork Poplar Creek watershed. We also did not possess specific information regarding the utilization of Parcel ED-1 by a number of special status neotropical migratory bird species.

The Service received a moribund gray bat from TWRA in 1994. This individual was collected in a building in the Upper East Fork Poplar Creek watershed. Subsequent analyses of this specimen indicates exposure to numerous site-specific contaminants present in the Upper East Fork Poplar Creek. This specimen was most likely foraging primarily in the East Fork Poplar Creek watershed prior to its death. In August of 1995, a bat, believed to be a gray bat, was caught in another building at Y-12, but released prior to a positive identification. In 1999, the Service was provided with copies of bat surveys conducted in the East Fork Poplar Creek watershed by ORNL staff and TTU researchers in 1992 and 1997. The 1992 survey was conducted in less than optimal conditions with ambient temperatures of less than 50 degrees Fahrenheit, and little or no insect or bat activity reported. The 1997 survey resulted in the capture of 14 bats representing six different species. No Federally listed or special concern species were captured. Foraging habitat for the gray bat and summer roosting habitat for the Indiana bat were identified. The results of the 1997 survey were included in the pre-development ecological surveys for the annual report entitled "Implementation of Mitigation Action Plan for DOE/EA-1113: Lease of Parcel ED-1 of the Oak Ridge Reservation, Oak Ridge, Tennessee (DOE 1997)." These 1997 surveys were designed to establish pre-development conditions, to serve as a baseline for future comparisons, and to establish future monitoring sites. Although this report referenced the 1992 survey efforts, no discussion of the less than optimal conditions encountered were included in the document. In 1999, the Service was also provided with information regarding a gray bat roost located on the ORR but not within the East

Fork Poplar Creek watershed. We believe the previously conducted surveys for the species do not provide conclusive evidence that these species do not utilize the East Fork Poplar Creek watershed for foraging. The Mitigation Action Plan (MAP) for the Parcel ED-1 EA identified specific exclusion zones and, based on our knowledge of the area, the majority of the identified Indiana bat roosting habitat lies within this zone.

There have been numerous problems with the MAP implementation, including the required annual monitoring of specific parameters and frequency of reporting. The Service has not been afforded the opportunity to review these documents since the original 1997 report was prepared. The revised MAP indicates that State-listed threatened and endangered plant species were not monitored in 1999 or 2000. Bats have not been surveyed since the 1997 efforts, and macroinvertebrates (Lepidoptera), mammals, reptiles, and game species (i.e., deer, turkey, duck, and bobwhite) were not surveyed in 1998, 1999, or 2000. The Lepidopteran monitoring does not account for the primary forage base of the gray bat or lactating female Indiana bats. The Summary of Pre- and Post-Development Monitoring (1996-2000) in Section 2.1 of the MAP stipulates that there are insufficient data available to evaluate impacts and yearly trends because there are data for two or fewer years. Amphibians were monitored in 1999. In a June 11, 2001, correspondence from the Tennessee Department of Environment and Conservation (TDEC), TDEC identified several deficiencies associated with the 2000 MAP survey efforts. These deficiencies included the absence of follow-up information regarding threatened and endangered species. TDEC emphasized the need for DOE to ensure that any future new site preparations, construction projects, utility installations, and expansions or disturbances involving excavations or clearing of previously undisturbed vegetated areas of ED-1 land or forest, be preceded by pre-construction rare plant and animal surveys of the designated areas to be disturbed. We are uncertain if the 2000 document was ever published. In a February 12, 2002, correspondence from TDEC to DOE, many concerns regarding compliance and monitoring issues with the ED-1 MAP were outlined.

The Service has recently become aware of several instances of non-compliance by CROET-authorized contractors working in Parcel ED-1, and some of these were discussed in Section 4.1 of the addendum. These incidents may have led to the extirpation of sensitive aquatic receptors, such as the Tennessee dace (*Phoxinus tennesseensis*), in the East Fork Poplar Creek watershed. The cumulative effects of these issues and concerns lend credence to our reevaluating the efficacy of the original 1996 EA and MAP, the decision process which led to the FONSI, and the ability of CROET to effectively monitor fish and wildlife resources and afford them adequate protection. It seems apparent that the oversight of DOE on CROET construction and monitoring activities in Parcel ED-1 since the original lease was signed has not been sufficient.

Data recently provided to the Service indicates that Parcel ED-1 is intensively utilized by a number of neotropical migratory birds deemed by the Service as species of management concern and on the National watch list of the Partners in Flight (PIF) program. These species include: chuck-wills widow (*Caprimulgus carolinensis*), blue-winged warbler (*Vermivora pinus*), prairie warbler (*Dendroica discolor*), Kentucky warbler (*Oporornis formosus*), prothonotary warbler (*Protonotaria citrea*), cerulean warbler (*Dendroica cerulea*), and wood thrush (*Hylocichla mustelina*). The East

Fork Poplar Creek Breeding Bird Route encircles the MAP exclusion zone on the west and north sides of Parcel ED-1. The breeding bird counts have been performed by private and academic organizations over a seven-year period from 1995-2001.

The Service is currently in litigation with the Southern Environmental Law Center regarding the status of the Cerulean warbler and the need for Federal protection pursuant to the Endangered Species Act. It is listed by the State of Tennessee as a species in need of management. The Cerulean warbler has been observed over the last four breeding seasons on the edge of and within the MAP exclusion zone. There is no discussion of this species and minimal discussion on the statistical information on migratory bird species presented in Appendix A of the addendum to the Parcel ED-1 EA. This includes recent information generated by contractors surveying these species for CROET. A preliminary review of the data presented in Appendix A suggests there has been an observed decline in the number of individuals and species on both the floodplain and perimeter routes from 1997 to 2000. This would appear to coincide with the initiation of construction activities on Parcel ED-1. The Service believes that the presented data deserved a full and complete assessment and discussion within the text of the addendum. This is especially important considering the emphasis on migratory birds in the deliberations of the ORR Land Use Focus Workgroup. Current surveys of forest interior bird habitat and potential negative impacts due to habitat fragmentation in the focus area are being performed by contractors assisting the workgroup. It is not clear why this wasn't also discussed in the addendum or MAP. Without a similar thorough assessment designed with specific data quality objectives in place, we believe the existing MAP does not adequately address the protection of migratory birds on Parcel ED-1.

The Service has not been consulted with by DOE, CROET, or authorized contractors regarding all construction activities on Parcel ED-1, including the construction of a cellular communications tower in 2000. The 0.25-acre site is within a previously undisturbed area on McKinney Ridge and could pose cumulative detrimental impacts to migratory birds which utilize the area. A search of our Office Activity Logging System database does not indicate any consultation from DOE, CROET, or other designated officials on the construction of this cell tower, contrary to specific rules and regulations promulgated by the Federal Communications Commission. We did review a co-location request submitted by a consultant contracted by Tritel. Co-location requests typically do not undergo the same level of scrutiny as original tower construction and license applications. We do not have any records for FCC license or ownership of the referenced tower, however, we believe that Doss Constructive Ideas (National Wireless Construction) built the "Highway 95 Horizon Center Site" in late 1999 or early 2000. The co-location request was not received in this office until December 12, 2000. We believe it is important to identify the specific type of structure and associated lighting for the tower. We have also reviewed requests from the City of Oak Ridge and East Tennessee Development District regarding the construction of the Horizon Center substation and transmission lines. A majority of that construction occurred in previously disturbed areas.

Specific guidance on the responsibilities of Federal agencies to protect migratory birds contained in Executive Order (EO) 13186 was issued on January 10, 2001. There is no discussion of EO 13186 in the addendum to the Parcel ED-1 EA. A Memorandum of Understanding (MOU) between the

Service and DOE regarding the protection of migratory birds on DOE-owned lands, including the ORR, has not been completed. The Executive Order stipulated this activity to be completed within two years of the EO issuance. One of the primary objectives of a MOU between the Service and DOE would be to ensure that the environmental analyses of Federal actions required by the National Environmental Policy Act (NEPA) or other established environmental review processes evaluate the effects of actions and agency plans on migratory birds, with emphasis on species of concern. We also have not been made aware that any pre-construction surveys or coordination between DOE and TDEC occurred for any construction activities on Parcel ED-1 during 1998, 1999, 2000, and 2001. Considering the importance of the ORR and this specific area to the management considerations of the PIF program for the Ridge and Valley physiographic province, including its inclusion as a Southern Appalachian Man and the Biosphere program biosphere reserve unit, we are concerned that DOE has ignored relevant data in the preparation of this addendum to the Parcel ED-1 EA.

The addendum to the ED-1 EA does not specifically outline in detail future monitoring efforts for threatened and endangered species, migratory birds, and the aquatic communities in East Fork Poplar Creek. The cumulative effects of the continuing disposition of DOE ORR properties to the City of Oak Ridge and other entities for economic development purposes on legally protected species, including migratory birds, are not adequately addressed in this addendum to the Parcel ED-1 EA. Pine Ridge is a prime example of limited foresight and oversight by DOE in previous land transfers. The limited discussion regarding the summary of pre and post-development monitoring in Section 2.1 of the addendum ignores potential future development activities that would be overseen by CROET. Despite their best intentions, we are not certain that CROET can accommodate or implement the monitoring needs for Parcel ED-1, as well as the specific mitigation guidance contained in the MAP. Contrary to the assertion in Section 3.1.3 of the MAP, the re-naming of the exclusion zone(s) to the "Natural Area" does not provide any mitigation of potential adverse impacts from continued development on Parcel ED-1.

It is not clear how the referenced CROET commitments in the MAP would be incorporated into a legally-binding document. Deed restrictions would likely not suffice in affording the highest level of protection to legally protected species. A specific contractual conservation easement on any conveyed real estate would likely be a preferred approach by the Service to ensure adequate protection of the remaining Parcel ED-1, however, an Integrated Natural Resource Management Plan, Habitat Conservation Plan, or a variation of a similar approach designed specifically for State and Federally listed threatened and endangered species and migratory birds would likely need to be developed in coordination with the Service, TWRA, and TDEC prior to the Service supporting any conveyance of the remaining Parcel ED-1 to CROET. At a minimum, the same level of scrutiny regarding the potential for neotropical migratory bird habitat fragmentation in the focus area of ORR should be extended to the entire Parcel ED-1, including previously developed areas. It might be prudent to include re-consideration of the entire Parcel ED-1 in the current assessment process being performed for the ORR Land Use Planning Focus Workgroup.

Informal conversations with DOE staff have included the topic of the potential for transferring Section 7 consultation requirements from DOE to CROET, but we are unaware that any discussions between Department of Interior and DOE solicitors have occurred regarding this subject. A determination of whether a private entity could legally comply with the provisions of Section 7 of the Endangered Species Act would have to be made. There are additional issues associated with the Migratory Bird Treaty Act which should also be discussed between our respective agency solicitors.

In the past, we have not administered a permitting program for incidental take of migratory birds. Instead, we have attempted to work cooperatively with agencies, and others, in the planning stages of projects to identify measures to avoid or mitigate take of birds, and have used enforcement discretion to allow otherwise lawful activities to proceed. However, third parties may now bring suits against Federal agencies under the Administrative Procedures Act for actions that result in the take of migratory birds without Service authorization.

Based on the above concerns, the Service believes that the addendum to the Parcel ED-1 EA and the MAP are inadequate, and at the present time, we cannot support the proposed fee title transfer of Parcel ED-1 to CROET. We believe the history associated with the initial characterization of Parcel ED-1 in the 1996 EA, the subsequent issuance of a mitigated FONSI, the environmental compliance record of CROET contractors, the absence of specific data quality objectives in the development of the MAP, the failure to fully implement the MAP as promised and intended, and the absence of specific DOE oversight of CROET activities collectively do not support the conclusions contained in the addendum which support the proposed fee title transfer of Parcel ED-1 to CROET. If the current situation is indicative or predictive of conditions in the future, the Service cannot even support the no action alternative. Therefore, we believe this proposal constitutes a major Federal action, and the Service requests that the proper procedures pursuant to the National Environmental Policy Act of 1969 be initiated through the development of an Environmental Impact Statement.

These constitute the comments of the U.S. Department of the Interior in accordance with provisions of the Endangered Species Act (87 Stat. 884, as amended: 16 U.S.C. 1531 et seq.), the Migratory Bird Treaty Act (16 U.S.C. 703-711), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), and the National Environmental Policy Act (42 U.S.C. 4321-4347; 83 Stat. 852). We appreciate the opportunity to comment. Should you have any questions or need further assistance, please contact Steve Alexander of my staff at 931/528-6481, ext. 210, or via e-mail at steven_alexander@fws.gov.

Sincerely,

A handwritten signature in cursive script, reading "Lee A. Barclay".

Lee A. Barclay, Ph.D.
Field Supervisor

xc: Sam Hamilton, FWS, Atlanta
Bruce Bell, FWS, Atlanta
Greg Hogue, DOI-OEPC, Atlanta
Terence N. Martin, DOI-OEPC, Washington
Holly Deal, DOI-SOL, Atlanta
Michael Holland, DOE, Oak Ridge
Marianne Heiskell, DOE, Oak Ridge
Patricia Dreyer Parr, ORNL, Oak Ridge
John Owsley, TDEC, Oak Ridge
Paul Davis, TDEC, Nashville
Reggie Reeves, TDEC, Nashville
Gary Myers, TWRA, Nashville
Dave McKinney, TWRA, Nashville
ORR Land Use Planning Focus Group



**Oak Ridge Reservation
Local Oversight Committee**

June 13, 2002

David R. Allen
U.S. Department of Energy
SE-30-1
PO Box 2001
Oak Ridge, Tennessee 37831

Subject: LOC Board resolution on draft Environmental Assessment Addendum and on draft Mitigation Action Plan for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee (May 2002; DOE/EA-1113-A)

Dear Mr. Allen:

The Oak Ridge Reservation (ORR) Local Oversight Committee (LOC) Board of Directors unanimously passed a resolution at its regular meeting of May 30, 2002, stating its position on the subject EA addendum. The LOC's position is as follows:

***The preferred alternative outlined in the EA is not sufficient
to meet DOE's obligations for environmental mitigation.***

As DOE chooses its alternative for the proposed action, the LOC requests that it take this issue into consideration and adopt a robust strategy for ensuring that important sensitive ecological areas will be appropriately protected in perpetuity.

Comments on the two documents under consideration have been submitted by the LOC's Citizens' Advisory Panel under separate cover.

The LOC is a non-profit regional organization funded by the State of Tennessee and established to provide local government and citizen input into the environmental management and operation of the DOE's ORR. The Board of Directors of the LOC is composed of the elected and appointed officials of the seven surrounding counties and the City of Oak Ridge, and the Chair of the Citizens' Advisory Panel.

Thank you for the opportunity to comment on these documents.

Sincerely,

John B. Evans
Chair, LOC Board of Directors

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Log No. 65772

Date Received JUN 17 2002

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cc: LOC Document Register
LOC CAP
LOC Board
John Owsley, Director, TDEC DOE-O
Michael Holland, Acting Manager, DOE ORO
Pat Halsey, FFA Administrative Coordinator, DOE ORO
Luther Gibson, Chair, ORSSAB
Carol M. Borgstrom, Director, NEPA Oversight, DOE HQ



**Oak Ridge Reservation
Local Oversight Committee**

June 13, 2002

David R. Allen
U.S. Department of Energy
SE-30-1
PO Box 2001
Oak Ridge, Tennessee 37831

Subject: Comments on draft Environmental Assessment Addendum and on draft Mitigation Action Plan for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee (May 2002; DOE/EA-1113-A)

Dear Mr. Allen:

The Oak Ridge Reservation (ORR) Local Oversight Committee (LOC) Citizens' Advisory Panel (CAP) submits the attached general and detailed comments on the subject EA. These comments should be attributed to the CAP only, although the LOC Board has directed the CAP to comment on the documents.

At its regular meeting of May 30, 2002, the LOC Board unanimously passed the following resolution regarding the proposed action and the draft documents, "The preferred alternative outlined in the EA is not sufficient to meet DOE's obligations for environmental mitigation." The CAP's comments support the Board's position.

The CAP of the LOC has up to 20 members with diverse backgrounds representing the greater ORR region; the CAP studies problems in depth and provides advice to the LOC Board and other governmental agencies.

The LOC CAP appreciates the opportunity to comment on these documents and the proposed action.

Sincerely,

A handwritten signature in black ink that reads "Norman A. Mulvenon".

Norman A. Mulvenon
Chair, LOC Citizens' Advisory Panel

Enclosure

cc: LOC Document Register

LOC CAP

LOC Board

John Owsley, Director, TDEC DOE-O

Michael Holland, Acting Manager, DOE ORO

Pat Halsey, FFA Administrative Coordinator, DOE ORO

Luther Gibson, Chair, ORSSAB

Carol M. Borgstrom, Director, NEPA Oversight, DOE HQ

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Date Received JUN 17 2002

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Comments on draft Environmental Assessment Addendum and on draft Mitigation Action Plan for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee (May 2002; DOE/EA-1113-A)

General Comments

The proposed DOE transfer of ED-1 to CROET should be considered in context of the ORR as a whole, including DOE's missions, long-term missions of other government agencies, DOE's expectations for continued downsizing, the trend to transfer land piecemeal, and the impact of such on the value and integrity of the ORR natural areas and the reservation as a whole. It would have been preferable to carry out an Environmental Impact Statement for the whole Oak Ridge Reservation before the release of greenfield property, rather than an Environmental Assessment, culminating in a questionable FONSI. Transfer of ORR land to other entities by DOE for economic development is a permanent change of status for undeveloped land. There is no equivalent protection or permanent preservation for the natural areas of the Reservation.

DOE must ensure that the existing exclusion zone or Natural Area is appropriately protected. Actions specified in the Mitigation Action Plan (MAP) are necessary to support a Finding of No Significant Impact (FONSI). During the development phase, construction activities must not be allowed to impact the exclusion zone. Post-development, an enforceable mechanism must be in place to ensure that private owners (CROET or its successors) fulfill their obligations for environmental monitoring and other management actions required under the FONSI and MAP.

A major failure of the EA addendum is lack of appropriate evaluation of other alternatives for the protection of the Natural Area, including transfer to an entity other than CROET or imposition of protective measures (such as a conservation easement) in addition to the MAP.

Rejection of Preferred Alternative

The CAP rejects the preferred alternative, which the EA addendum admits is the "bounding, worst-case" impact.

The CAP would prefer to see the parcel as a whole or the developable area be deeded to the City of Oak Ridge instead of CROET. More than \$14 million of public funds has been spent on infrastructure of the Horizon Center, or about \$33,000 per acre developable for industry. This represents a substantial investment of taxpayer money. By waiving its rights to the self-sufficiency parcel, the City is foregoing a substantial asset.

Transfer of the developable 426 acres to CROET is acceptable, but not the most desirable option. Because of the substantial public investment, there should be mandatory provision for oversight or auditing of CROET or its subsidiary corporation by the city, DOE, or an independent oversight group regarding how money from the sale of DOE transferred land is distributed and to whom. Oak Ridge taxpayers have a right to know how these resources are used.

The CAP opposes the transfer the approximately 491 acres of Natural Area to CROET. The most effective alternative to ensure that the Natural Area is protected in perpetuity is to transfer the entire Natural Area to an agency or organization that is equipped to manage it for conservation purposes. Another option is transfer of the Natural Area to the City of Oak Ridge which can then accord it greenbelt status. Retention of the 531 sensitive acres by DOE until

permanent protection can be arranged is more acceptable than transfer to CROET. Concerns regarding the transfer of the Natural Area to CROET are listed below:

- CROET's stated mission is restricted to economic development. This is inconsistent with the requirements for ecological monitoring.
- To date CROET has not fulfilled its ecological monitoring responsibilities on ED-1 (Horizon Center) under the April 1996 MAP.
- There is no reason to believe that CROET will willingly undertake the necessary degree of ecological monitoring of the natural area once it owns the entire parcel.
- The development plan encroaches on the original exclusion zone, with less ecologically significant acreage "traded" for this encroachment in other areas. This can be seen by comparing Fig. MAP-4 in the April 1996 MAP to CROET's current development plan.
- Once all developable sites are sold to private industries, CROET will then only own the infrastructure, roadways, and Natural Area. With no further income from land sales, there will be no source of funds to continue needed inspections, protection from encroachment, and any remaining ecological monitoring requirements.
- CROET is a corporation subject to the problems that occasionally beset such businesses. Should it fail or be disbanded, then the responsibility for protection and monitoring of the Natural Area would be in limbo. This scenario should be evaluated in the EA addendum.

Other Alternatives for Protection of the Natural Area

If DOE decides to go forward with transfer of the entire parcel to CROET, a preferred strategy for ensuring the integrity of the Natural Area is to remove the responsibility for its ecological monitoring and protection from CROET. The DOE has the ultimate obligation of ensuring compliance with its commitments to mitigation in the EA addendum. The CROET lacks institutional expertise on or commitment to conservation. Options to be analyzed in the EA addendum should include granting a conservation easement to be held by Tennessee Wildlife Resources Agency, the Nature Conservancy, or other conservation organization. This would give the conservation organization legal authority to manage the area for conservation purposes and ensure that the landowner complies with requirements respecting the Exclusion Zone.

Failing adoption of the above options, DOE must establish accountability for future monitoring, protection, and mitigation of the Natural Area by CROET. The proposed deed restriction is not an effective mechanism to ensure accountability. The deed restriction could be enforced only by DOE taking the property back. No one else can enforce the restriction, and there are no less severe enforcement options. Concerns regarding accountability are listed below:

- The draft MAP gives CROET the authority to revise the MAP without any input from the community (page 12). Such revisions constitute a breach of faith with stakeholders who are promised specific monitoring and protections for the Natural Area under NEPA in advance of the transfer.
- Requirements for MAP review and follow-up are vague, and there are no provisions to assure that CROET fulfills its obligations to mitigation. Requirements for monitoring, review, and follow-up should be made explicit and should include external oversight. For example, the

advisory panel described on pages 12 and 13 of the MAP should be mandatory, not at CROET's discretion.

- A mechanism should be established to ensure compliance with the requirements of the MAP by CROET and its successors. Requiring that a performance bond be posted is a good example.

Detailed Comments and Corrections

Page 10, Table 3.2 – More recent data on city budgets was made available in connection with the mall. The EA addendum should cite 2001 actual (instead of 1999) and 2003 budget (instead of 2001).

Page 10, Section 3.4.2 – Please clarify if water is supplied by city or ETTP.

Page 11, Section 3.4.5 – Natural gas connection should be shown on Figure 1.3 (1999 and 2000) or on a recommended update (new figure or combined with Figure 1.3) to show activity for 2001 and plans for 2002.

Section 3.5 – The 80-acre area should be shown on one of the maps (or if it refers to Area 4, state this in the text).

Page 13 – Dace Branch is not shown on Figure 1.3 as stated in line 8. Spring 2000 is the most recent sampling date. When in 2002 is sampling scheduled (line 17)?

Page 14 – Pine Ridge is discussed but not shown on Figure 5.1.

Page 16 – The route 58/95 expansion information needs an update from 1999 to material available at the 2002 Tennessee Department of Transportation public hearings.

Page 19 – Table 5.1 is an unrealistic projection. Direct employment is overly optimistic as are the figures for the lower bound. Line 9 gives assumption “that each of these sites meets 100% of its job creation goals.” While this may be considered an upper bound or a maximum impact, it serves to gain political acceptance more than to present a realistic analysis.

Page 20 – Add a discussion of increased invasive species due to development to Section 5.2.5 and Section 4 which begins on page 12. The awareness of this problem has increased since the original EA process began.

June 13, 2002

VIA EMAIL AND U.S. MAIL

Mr. David Allen, SE-30
U.S. Department of Energy
P.O. Box 2001
Oak Ridge, Tennessee 38731-2001

Re: EA Addendum - Move Forward With Horizon Center

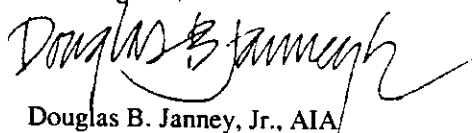
Dear Mr. Allen:

There are several reasons to end the years of assessment and reassessment of environmental conditions at Horizon Center and expeditiously transfer the land for fee-simple availability to private sector development.

1. As the community's largest employer, **the well-founded DOE purpose in releasing the property was to mitigate it's downsizing**, and through its "reindustrialization" program make land available for new business and industry.
2. The official diligence associated with identifying and conserving certain natural areas or special features on this particular property has been exceedingly thorough and has resulted in a plan to develop only one-half of the entire parcel – a significant accommodation on a parcel designated for commercial development, **and which until the mid 1940's was almost entirely under agricultural cultivation.**
3. **Future conservation of the natural areas is afforded without continued DOE monitoring** through numerous means already in place: (a) City of Oak Ridge Greenbelt zoning, (b) Horizon Center Declaration of Covenants and Restrictions, (c) numerous entities that routinely regulate development of building projects, i.e.: TVA, TDEC, Corp of Engineers, City of Oak Ridge Code Enforcement and Engineering permitting, insurance underwriters, and lending institutions. Further "regulation/monitoring" is redundant and unnecessary expenditure of taxpayer dollars.
4. Several years of monitoring data support the statement that **the Horizon Center development model shows that development can occur without harming adjacent undeveloped areas.** Many would agree that the development has improved ecology on the property, which had undergone substantial recent damage though uncontrolled logging and pine beetle infestation.
5. **The City of Oak Ridge is waging the greatest struggle in its history for economic viability.** This is in the wake of the continued downsizing of the City's principal employer for the past 6 decades. The City has been working hard to diversify its economy with new business and industry. The "cloud" placed upon successfully marketing Horizon Center by the recurring appearance of controversy about environmental issues is not helpful and certainly ironic when one considers the relative minute amount of land to be developed amidst tens of thousands of forested acres viewed from the 10,000-foot perspective. To think that this acreage that until recently was simply farmland, but is now seemingly touted as a national ecological treasure is at least questionable.

I appreciate the opportunity to offer my personal comments and observations and would be glad to elaborate on any of them. If so desired, my daytime phone is 777-2537.

Best Regards,



Douglas B. Janney, Jr., AIA

Native Oak Ridger and Longtime Resident
Division Manager of Architecture and Planning – Lockwood Greene
Member, City of Oak Ridge Industrial Development Board

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Log No. 65742

Date Received JUN 17 2002

File Code _____

Submitted to: David R. Allen
U. S. Department of Energy, SE-30-1
P.O. Box 2001, Oak Ridge, TN 37831
fax: (865) 576-0746

Submitted by: William Schramm
220 Outer Drive
Oak Ridge, TN 37830

Date: June 14, 2002

Comments on the "Draft EA Addendum for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee" (DOE/EA-1113-A)

General Issues

- 1) The draft EA (as is clear from the document title) is set up with a single entity in mind (essentially the reverse of a "sole-source" action). The proposed action under review is whether or not to release the acreage in question to CROET. This is inconsistent with both the letter and spirit of U.S. regulations (e.g., 41CFR101) overseeing the disposal of federal government real property. Nothing in 10CFR770 waives these requirements for a DOE transfer. The proposed action needs to be redefined to address the transfer of the property to **any** interested public or private sector entity.
- 2) The document provides absolutely no documentation of efforts to advertise the property's availability to a broad group of potentially interested parties. If a transfer to a single entity is to be considered, a lack of interest by other parties should be clearly documented. Such documentation would necessarily go well beyond recording the Oak Ridge City Council's waiver of interest.
- 3) The draft EA fails to address whether a transfer of the ED-1 parcel to CROET violates the Economy Act, OMB Circular A-76 or other statutes/regulations that address competition between federal government entities and the private sector. Violation of these restrictions are a real possibility with the proposed transfer since it is possible that for the purposes of these statutes/regulations CROET constitutes a federal government entity.

This is the case because while CROET is a non-profit entity, it was established primarily to further DOE/OR's objectives on the Oak Ridge Reservation and its principle (possibly its sole) source of funding has been and continues to be the U.S. treasury directly and indirectly (via the collection rents or fees for the use of U.S. government-owned assets).

If CROET is judged to be a U.S. government entity for the purposes of the Economy Act, OMB Circular A-76 and similar statutes/regulations, then CROET should not be competing with the private sector by developing a new industrial park under any circumstances, much less engaging in such an activity with preferential treatment from the federal government (in the form of a possible transfer of land at a price below market value or a transfer not available to other entities). The EA should address in detail the appropriateness of a transfer to CROET in light of restrictions on federal government competition with private sector entities.

- 4) An Environmental Assessment is required to consider the human environment including economic impacts. The draft EA's consideration of economic impacts is so inadequate as to be non-existent. A number of significant economic issues receive no attention or evaluation. For example:

a) CROET's effectiveness

the draft EA states: "CROET has provided information to DOE which indicates that, based on the 6 years of time that has elapsed between the decision to lease Parcel ED-1 and the present, the kind of investment necessary for long-term, commercial development of the parcel is not possible without ownership of the land."

It is not obvious that CROET is the best entity to hold title to ED-1 if the parcel is transferred. It is at least possible that the parcel remains largely unoccupied today because CROET has been ineffective in the role of developer/manager. If this is the case, the transfer of land to CROET will not provide the desired economic development. The draft EA does not, but needs to, address the effectiveness of CROET's operations to date. Such an assessment is appropriate since the economic benefits sought from the proposed action will be more dependent upon CROET's organizational effectiveness under a "transfer" scenario than under a "lease" scenario.

b) Economic benefit to the community

The draft EA does not, but needs to, evaluate whether future development occurring on the ED-1 site will be more advantageous to the community (for example in terms of tax revenue) under the current leasing arrangement, CROET ownership or ownership by some other entity.

c) The Hall Amendment

The Hall Amendment states: "A lease entered into under subsection (c) may not be for a term of more than 10 years, except that the Secretary may enter into a lease that includes an option to renew for a term of more than 10 years"

DOE "extended" the CROET lease on ED-1 well before the initial 10 year lease expired (in fact, the 10 year lease has yet to expire). If an assessment of CROET performance to date indicates that CROET ineffectiveness has hindered development of ED-1, then DOE must consider whether the goal of economic development can be furthered by permitting CROET control over the site for the term of the lease renewal.

In such a case, DOE should evaluate the possibility of voiding the lease extension/renewal and the draft EA should include an additional alternative to the proposed action. That alternative would be:

DOE will honor the initial 10 year CROET lease, but any lease renewal or extension will be voided and following lease expiration, DOE will offer parcel ED-1 to all interested parties.



STATE OF TENNESSEE

DON SUNDQUIST
GOVERNOR

June 14, 2002

David R. Allen
United States Department of Energy
Oak Ridge Operations Office
200 Administration Road
Oak Ridge, Tennessee 37831

RE: State of Tennessee's Comments on the Department of Energy's National Environmental Policy Act Environmental Assessment of the Addendum and Mitigation Action Plan for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee.

Dear Mr. Allen:

I am responding on behalf of the governor of the state of Tennessee as the lead point of contact for state NEPA reviews concerning the Department of Energy's (DOE) *National Environmental Policy Act Environmental Assessment of the Addendum and Mitigation Action Plan for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee* (the EA). Also enclosed are comments from specific state agencies. Please consider these comments as you would those in this letter.

We have reviewed the specific proposed action described in the EA. We strongly support the transfer of the developable acreage to the Community Reuse Organization of East Tennessee (CROET). Ownership of the developable portion of Parcel ED-1 will improve CROET's ability to market and develop the property. Prior to the transfer of any contaminated areas, DOE will have to obtain approval from the governor pursuant to CERCLA.

We strongly recommend that DOE retain ownership and control of the remaining 531 acres of natural area at this time. Wildlife habitat, plant communities, threatened and endangered species, water resources, wetlands, and historic and archaeological resources are contained within the natural area. We believe DOE should retain ownership until all issues relating to their protection are adequately addressed.

OFFICIAL FILE COPY

Log #

Enclosed

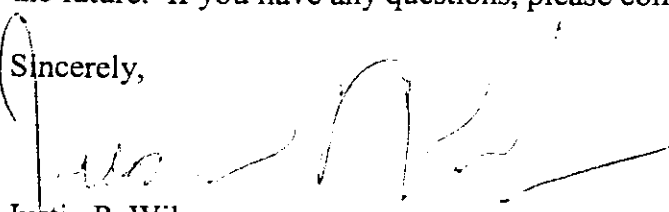
File Code

State Capitol, Nashville, Tennessee 37243-0001
Telephone No. (615) 741-2001

65764
JUN 17 2002

We appreciate the opportunity to comment and will respond to additional opportunities in the future. If you have any questions, please contact David L. Harbin at (615) 532-0144.

Sincerely,



Justin P. Wilson
Deputy to the Governor for Policy

Encl.

The following state agencies commented on the EA:

The Tennessee Department of Environment and Conservation
Division of Natural Heritage
Oak Ridge operations Office

The Tennessee Wildlife Resources Agency

The Tennessee Department of Economic and Community Development



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

June 12, 2002

Mr. David R. Allen
United States Department of Energy
Oak Ridge Operations Office
200 Administration Road
Oak Ridge, Tennessee 37831

Dear Mr. Allen:

The Tennessee Department of Environment and Conservation, Division of Natural Heritage (DNH), appreciates the opportunity to review and comment on the May 2002 Environmental Assessment Addendum for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee, and offers the following comments.

Under the May 2002 EA Addendum, DOE proposes to transfer title of, rather than lease, the entirety of the 957 acre Parcel ED-1 to the Community Reuse Organization of East Tennessee (CROET) for the expressed purpose of maximizing the developable acreage while preserving important ecological and scenic features of the parcel. CROET would be responsible for the development of the 426 developable acres of Parcel ED-1, as well as for the protection of wildlife habitat, plant communities, threatened and endangered species, water resources, wetlands, and historic and archaeological resources within the 531 acre exclusion area, or natural area, of Parcel ED-1. The transfer agreement would require that CROET comply with the provisions of a Mitigation Action Plan (MAP), and the deed would contain restrictions that ensure the continued protection of the 531 acre natural area, and that the uses of the developable areas are consistent with those analyzed in the 1996 EA.

While CROET may be best qualified to own and manage the 426 developable acres, the DNH has reservations about CROET providing for the long-term stewardship and ecological monitoring of the 531 acre natural area.

While the May 2002 EA Addendum does seem to prefer the proposed action of a transfer of title of the entirety of Parcel ED-1 to CROET, it also provides for two other options: the transfer of only the 426 developable acres and retaining ownership and control over the 531 acre natural area; and the transfer of all of Parcel ED-1 except for the EFPC floodplain, which would remain under DOE ownership and control in order to address possible future requirements under CERCLA. It appears that a no-action alternative would continue the current lease with CROET.

Based upon the ecological significance of the 531 acre natural area and reservations that the DNH has about CROET providing for the natural areas long-term stewardship and ecological monitoring, the DNH prefers that DOE transfer only the 461 developable acres to CROET as proposed, but retain ownership and control over the remaining 531 acre natural area.

Further, in June 2001 the DNH submitted to DOE a formal request to expand a 1985 Natural Areas Registry Agreement between the State of Tennessee and DOE to incorporate approximately 20,000 acres of ecologically significant lands at the ORR. These 20,000 acres were very carefully delineated so as to avoid areas that were best suited for development or other uses. While the 1985 Agreement recognized 7 discreet areas covering approximately 2,000 acres as Registered State Natural Areas, the 2001 proposal identifies and delineates 5 new landscape scale natural area sub-units covering approximately 20,000. One of these sub-units, Blackoak Ridge, includes the 531-acre natural area of Parcel ED-1, but excludes the 426-acre developable area of Parcel ED-1. Our preferred alternative of DOE retaining ownership and control of the 531-acre natural area is consistent with the DNH June 2001 Natural Area proposal.

In summary, the DNH prefers that DOE retain the 531-acre natural area portion of Parcel ED-1, and that the Oak Ridge National Lab (ORNL) continue its monitoring of the area.

Again, we appreciate the opportunity to comment on the Draft Addendum to the Environmental Assessment for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee. Please feel free to contact me at 615-532-0431 should you have any questions or need any additional information

Sincerely,

A handwritten signature in black ink, appearing to read 'Reginald G. Reeves', with a long horizontal flourish extending to the right.

Reginald G. Reeves.
Director



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DOE OVERSIGHT DIVISION
761 EMORY VALLEY ROAD
OAK RIDGE, TENNESSEE 37830-7072

June 12, 2002

David R. Allen
NEPA Compliance Officer
DOE Oak Ridge Operations
PO Box 2001, SE-32
Oak Ridge, TN 37831-8739

Dear Mr. Allen

National Environmental Policy Act Environmental Assessment Addendum and Mitigation Action Plan for the Proposed Transfer of Parcel ED-1 to the Community Reuse Organization of East Tennessee (CROET)

The Tennessee Department of Environment and Conservation, DOE Oversight Division has reviewed the subject document in accordance with the requirements of the National Environmental Policy Act and associated regulations of 40 CFR 1500-1505 and 10 CFR 1021 as implemented.

General Comments

The Data Summary presented in pages 5 and 6 of the Mitigation Action Plan (MAP) referring to the previous MAP indicates that the monitoring activities by the Department of Energy (DOE) and its contractors have progressively decreased since 1997. This indicates a failure to meet the minimum monitoring mitigation efforts required in the previous MAP. In a letter dated February 12, 2002 to DOE, the state expressed concern regarding DOE's seeming lack of commitment to comply with the implementation of the previous MAP and requested that DOE fully and clearly address its position on the execution of the mitigation activities as outlined in the "*Environmental Assessment (DOE/EA-1113), Finding Of No Significant Impact (FONSI)*."

The Lower East Fork Poplar Creek (LEFPC) Floodplain Soils Remedial Action project only addressed mercury contaminated soils within the 100 year floodplain. Because of continuing releases of mercury into LEFPC from the Y-12 Plant, surface water and sediment issues for LEFPC were to be addressed as part of the DOE Y-12 Plant Environmental Restoration Program. Although steps have been taken at Y-12 to reduce mercury discharges into the creek, no CERCLA decision has been made concerning the LEFPC surface water and sediments. Therefore, this EA should address DOE's plans to insure proper activities are completed in accordance with Section 120 (H) of CERCLA prior to transfer of properties from the Oak Ridge National Priority List (NPL) site.

Specific Comments

Section 3.4.2 Water Supply: The reference to the proposed water storage tank should be more specific regarding the future water needs for the site. Discuss alternative plans for the future development of the site, which is dependent upon the completion of the cities "looped" service, if this "looped" service is not implemented.

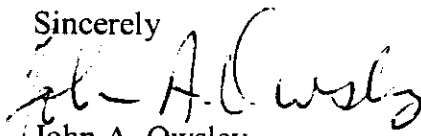
Section 4.1 Threatened and Endangered Species: The implication that construction activities on the site were the cause of the decline in Tennessee Dace in Dace Branch is speculation at best. There has been continued decline of population numbers over the years since the end of construction indicating that there may be other causal factors involved. Continued monitoring at this point is needed to further evaluate the condition of this fish population. If current sampling indicates that the population has been further affected, DOE should implement whatever action plan is necessary to mitigate impacts.

Section 4.2 Cultural Resources: Line 30: "....these sites would continue to be periodically inspected...." DOE should be specific on how to implement the inspection.

MAP Document Page 3, Figure 1.1: The coverage of the Threatened and Endangered species appears to be incomplete. There are omissions of formerly identified (see references below) cultural resources on the map (Page 3, Fig. 1.1) in the MAP document. These omissions include cultural resource site numbers: 950A, 953A, 935A, 953B/C, 954A, and 975A/B. References: (1) An Evaluation of Previously Recorded and Inventoried Archaeological Sites on the ORR, Anderson & Roane Counties, Tennessee, ORNL/M-4946, DuVall, Glyn D. and Sousa, Peter A., 1996. (2) Historic Sites Reconnaissance of the Oak Ridge Reservation, Oak Ridge, Tennessee, ORNL/TM-5811, Fielder, George F., et al, April 1977.

If you have any questions concerning the above questions, please contact me at (865) 481-0995.

Sincerely


John A. Owsley
Director

xc: Dodd Galbreath, TDEC
Reggie Reeves, TDEC
Robert Brown, DOE
Margaret Morrow, DOE
Steven Alexander, FWS
Lawrence Young, CROET



TENNESSEE WILDLIFE RESOURCES AGENCY

ELLINGTON AGRICULTURAL CENTER
P. O. BOX 49747
NASHVILLE, TENNESSEE 37264

June 10, 2002

Mr. David Harbin
Office of the Commissioner
Department of Environment and Conservation
20th Floor, L&C Tower
401 Church Street
Nashville, TN 37243-0454

Re: ED-1 Land Transfer
U.S. Department of Energy
Oak Ridge Reservation

Dear Mr. Harbin:

The Tennessee Wildlife Resources Agency (TWRA) recommends that the U.S. Department of Energy (DOE) retain ownership of all ED-1 lands identified for conservation purposes. We recommend that DOE prepare a comprehensive plan for the reservation which would protect lands in perpetuity for conservation purposes. This plan should make provisions for conservation research and national security projects.

TWRA has no objection to the transfer of ED-1 lands previously identified for development purposes. Please include this recommendation in Tennessee's formal response to the proposed ED-1 land transfer.

Sincerely,


Aubrey D. McKinney, Chief
Environmental Services Division

ADM:bg

The State of Tennessee

AN EQUAL OPPORTUNITY EMPLOYER



Department of Economic and Community Development

William Snodgrass/Tennessee Tower Building, 11th Floor, 312 8th Avenue North, Nashville, Tennessee 37243
615-741-1888 / FAX: 615-741-7306

Tony Grande
Commissioner

Don Sundquist
Governor

MEMORANDUM

TO: David Harbin, TDEC
FROM: Tony Grande ^{TG}
DATE: May 23, 2002
SUBJECT: Comments-NEPA Environmental Assessment
Proposed Transfer of Parcel ED-1 to CROET
Oak Ridge, Roane County, Tennessee

The Department of Economic and Community Development very much supports the fee simple transfer of the ED-1 Site from DOE to CROET. We have always had a concern regarding the desirability of leasehold interests to the private industrial market as enumerated in Paragraph 2 of Page 6 of the EA Addendum. The average to major size industrial prospect is just not interested in long term leases when fee simple holdings are so available. We have seen this demonstrated in numerous "industrialization" efforts by federal interests across the state. Leaseholds are generally only attractive to small, specialized industries (usually related to the prime use of the major site such as a munitions plant) or to startup industries. CROET's ownership of Parcel ED-1 will vastly improve its success with marketing said property.

Should you have any questions or need any further comments, please contact my office or Wilton Burnett.

TG/WB/tr

Cange, Susan M

From: Allen, David R
Sent: Friday, June 14, 2002 7:54 AM
To: Cange, Susan M
Cc: Carnes, Nancy L; Kates, Katy; Hart, Melissa; Elmore, James L
Subject: FW: Parcel ED-1 EA/MAP and cerulean warbler

This is more information than actual comment, however it should be included in as comments on our documents. Melissa please include it in the file for the ED1 comments.

David A.

-----Original Message-----

From: Ellen Smith [mailto:smithellen@comcast.net]
Sent: Thursday, June 13, 2002 11:47 PM
To: Allen, David R
Subject: Parcel ED-1 EA/MAP and cerulean warbler

David:

Having heard from several people about observations of the cerulean warbler in the exclusion area at Parcel ED-1, I tried to verify the actual federal status of this species is. I'd like your office to be aware of the information I found:

Before 1996, the cerulean warbler was a candidate species (C2) for listing as threatened or endangered. However, in 1996 the USFWS discontinued the designation of C2 species as candidates for listing (50 CFR 17; 28 February 1996).

The Southern Environmental Law Center (
http://www.selcga.org/act_cerulean_warbler.shtml)
says:

SELC filed a petition with the FWS in October 2000, to list the Cerulean warbler as a threatened species, which was followed by our 60-day Notice of Intent, filed March 9, 2001 to sue the agency under the Endangered Species Act for the its failure to respond to the petition.

In response to the 60-day notice, the FWS has committed to make a decision about listing the Cerulean as a "candidate" species.

That website has a LONG list of petitioners requesting a threatened-species listing:
http://www.selcga.org/res_news_2001-03-12.shtml . A summary of the petition is at
http://www.forestfest.com/Cerulean_Warbler/Summary_of_Petition.htm .

Defenders of Wildlife provided a short quotation about the bird's status at <http://www.defenders.org/releases/pr2000/pr112200.html> :

Since 1966, the cerulean warbler's population has shrunk by more than 70 percent, making it one of the fastest disappearing songbirds in the United States. Habitat loss is the primary reason for the disappearance of the cerulean warbler, with commercial logging and mountaintop removal coal mining as the main culprits. The species and its habitat are currently not protected, which biologists predict will lead to extinction of the species in the near future.

-- Ellen Smith, 116 Morningside Drive, Oak Ridge, TN 37830